

if, under the totality of the circumstances, the officer conducting the search had objective grounds for believing the defendant posed a risk of danger to himself or others. *Id.* at 660, 152 P.3d at 21.

Even when a person is not suspected of engaging in criminal activity, law enforcement officers may conduct a protective search of that person for weapons if officers observe weapons in the immediate vicinity and on the person's body, combined with the person's uncooperative behavior. *State v. Fleenor*, 133 Idaho 552, 556, 989 P.2d 784, 788 (Ct. App. 1999). Idaho's highest court has indicated that evidence that a person is under the influence of an illicit drug is a factor in this analysis. *Id.* (dicta) (citing *State v. Johnson*, 137 Idaho 656, 661, 51 P.3d 1112, 1117 (Ct. App. 2002)); *State v. Downing*, 163 Idaho 26, 30, 407 P.3d 1285, 1289 (2017). Similarly, suspicious movements by a person towards his pockets could lead an officer to reasonably believe the person posed a risk of danger. *Id.* at 662, 152 P.3d at 23 (citing *United States v. Davis*, 202 F.3d 1060, 1063 (8th Cir. 2000)); see *State v. Lee*, 162 Idaho 642, 648, 403 P.3d 1095, 1101 (2017) (protective search was justified when, among other things, the defendant moved his hands towards his pocket). A person's past interactions with law enforcement also bears on the reasonableness of an officer's belief that the person poses a risk of danger. *Lee*, 162 Idaho at 648, 403 P.3d at 1101.

Officer Purser had objective grounds for believing Mr. Smith posed a danger to the officers because Officer Dannehl discovered and removed a knife from Mr. Smith's driver's-side dashboard at the beginning of the encounter. See *Fleenor*, 133 Idaho at 556, 989 P.3d at 788 (presence of weapons in the vicinity bears on the perception that a defendant was armed and dangerous). Second, Mr. Smith appeared to be under the influence of an illicit drug; the officers were dispatched to investigate an unconscious, unresponsive person, and Mr. Smith took an unusually long time to wake up when the officers made contact with him. See *Downing*, 163 Idaho

at 30, 407 P.3d at 1289 (defendant objectively posed a risk of danger when, among other things, he appeared to be under the influence of illicit drugs). Additionally, Officer Purser knew Mr. Smith to be a drug user from previous incidents. *See Lee*, 162 Idaho at 648, 403 P.3d at 1101 (a defendant's conduct with officers in the past can give rise to an apparent risk of danger in a subsequent encounter). Officer Purser observed Mr. Smith holding a bandana in his lap with an awkward grip, appeared to be attempting to conceal it, and moved it towards his waistband. *See Henage*, 163 Idaho at 662, 152 P.3d at 23 (moving one's hands towards one's pockets can give rise to an apparent risk of danger). Furthermore, Mr. Smith did not cooperate with Officer Purser when he inquired as to the nature of the hidden object. *See Fleenor*, 133 Idaho at 557, 989 P.2d at 788 (a defendant's lack of cooperation bears on the perception that he is armed and dangerous). Under the totality of these circumstances, Officer Purser had reasonable grounds to believe Mr. Smith posed a risk of danger to the officers and was justified in searching the bandana to determine whether it contained a weapon.

**ii. Officer Purser lawfully removed the pipe from the bandana under the "plain feel" doctrine because he had already identified the item as contraband by virtue of its shape.**

After Officer Purser took the bandana from Mr. Smith, he felt the contours of an object through the fabric which were consistent with a "pipe used when using narcotics." *See* Ex. A, Purser Report. *Terry* prohibited any further intrusion into the bandana because Officer Purser no longer believed it contained a weapon. *See Terry*, 392 U.S. at 27 (the protective search is a narrowly drawn authority to search for weapons). However, removing the pipe from the bandana was lawful pursuant to the "plain feel" exception to the search warrant requirement.

"The plain touch or plain feel exception . . . may be invoked when, during the course of a *Terry* frisk for weapons, an officer feels an object whose contour or mass makes its identity

‘immediately apparent.’” *In re Doe*, 145 Idaho 980, 984, 188 P.3d 922, 926 (Ct. App. 2008) (quoting *Minnesota v. Dickerson*, 508 U.S. 366, 375–76 (1993)). *Doe* concerned a justified *Terry* search of a seventeen-year-old burglary suspect. *Id.* at 982, 188 P.3d at 924. While conducting a pat-down for weapons, the officer felt an object in the defendant’s clothing which was consistent with a box of cigarettes. *Id.* The defendant was read the *Miranda* warning. *Id.* The officer then asked the defendant his age, learned he was seventeen years old, and removed the cigarette box. *Id.* The court of appeals determined that removing the cigarette box was lawful under the “plain feel” exception to the search warrant requirement because the officer discovered it during a justified pat-down for weapons, immediately recognized the nature of the object by its shape, and learned that the defendant was under eighteen years old, which rendered the cigarettes contraband. *Id.* at 984, 188 P.3d at 926. Similarly, the “plain feel” doctrine permitted Officer Purser to remove the pipe from the bandana when he had justifiably taken it from Mr. Smith on the suspicion that it contained a weapon, but discovered through sensation that it instead contained contraband.

**iii. The baggie of pills and the baggie containing the white, powdery substance found on Mr. Smith’s person were products of a valid search incident to arrest.**

When Officer Purser discovered the pipe in Mr. Smith’s possession, he had probable cause to arrest him for possession of drug paraphernalia and conduct a search incident to that arrest. An announcement by the officer that the suspect is under arrest is not required for an arrest to nonetheless occur. *State v. Budka*, 169 Idaho 180, 492 P.3d 1139, 1146 (Ct. App. 2021) (defendant was under arrest, for the purpose of determining the validity of a search incident to arrest, without any statement by the officer that he intended to effect an arrest). Although Officer Purser did not expressly state that Mr. Smith was under arrest, Mr. Smith was in fact arrested when he was placed in handcuffs and Officer Purser determined that the bandana contained contraband.

Officers may search an arrestee incident to a lawful arrest. *State v. Moore*, 129 Idaho 776, 781, 932 P.3d 899, 904 (Ct. App. 1996) (citing *United States v. Robinson*, 414 U.S. 218 (1973)). “The permissible scope and purposes of a search incident to an arrest is not limited to the removal of weapons but includes the discovery and seizures of evidence of crime . . . .” *Budka*, 169 Idaho 180, 492 P.3d at 1143. Here, the officers lawfully searched Mr. Smith incident to his arrest for possessing drug paraphernalia and discovered additional contraband items in his pockets. Therefore, no grounds exist to suppress the contraband found on Mr. Smith’s person incident to his arrest for possessing drug paraphernalia.

**b. Mr. Smith is correct that his identification of the object in the bandana as a “meth pipe” is suppressible under the *Miranda* rule.**

Mr. Smith argues that his statement that the object in the bandana was a “meth pipe” should be suppressed because it was made in response to an interrogation that occurred when he was in custody, without first being advised of his constitutional rights. Def.’s Mot. at 5–6. Police may not question a suspect who is in custody without first informing him of his rights “to remain silent and to counsel, and to obtain a knowing, voluntary, and informed waiver of those rights.” *State v. Kent*, 167 Idaho 689, 692, 475 P.3d 1211, 1214 (2020) (citing *Miranda v. Arizona*, 384 U.S. 436, 444 (1966)).

Because Mr. Smith was in custody<sup>2</sup> when Officer Purser asked him to identify the object in the bandana, the requirement of a *Miranda* warning was triggered. The “public safety”

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<sup>2</sup> The party seeking to exclude evidence bears the burden of showing that he was in custody. *State v. Munoz*, 149 Idaho 121, 129, 233 P.3d 52, 60 (2010). However, the State acknowledges it is highly likely that Mr. Smith was in custody when Officer Purser asked him to identify the item in the bandana. See *State v. Hurst*, 151 Idaho 430, 436, 258 P.3d 950, 956 (Ct. App. 2011) (a defendant is ‘in custody’ within the meaning of *Miranda* if he is under arrest or if a restraint has been placed on his freedom which would lead a reasonable person to believe he was under arrest). Here, Mr. Smith was handcuffed in the presence of three uniformed officers at the time the question

exception does not appear to apply to Officer Purser's questioning because such questioning was unnecessary to dispel his concern that the bandana might have contained a weapon, as he had already identified the object through sensation. Therefore, Mr. Smith is correct that his statement that the object was a "meth pipe" should be excluded pursuant to the *Miranda* rule.

The search which followed Mr. Smith's statement, however, remains valid as a search incident to arrest. *See* § II(a). Because Officer Purser had determined, through sensation, that the object in the bandana was contraband prior to inquiring about it, probable cause existed to arrest Mr. Smith for possessing drug paraphernalia. Mr. Smith's arrest was not precipitated by his statement, but rather by Officer Purser's discovery of the pipe. Thus, while Mr. Smith's statement is suppressible, the pipe and baggies containing suspected contraband found on his person are not.

### III. CONCLUSION

For the foregoing reasons, Mr. Smith's motion to suppress should be DENIED with respect to the contraband, but GRANTED with respect to Mr. Smith's statement regarding the "meth pipe."

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was asked; it is likely a reasonable person would have perceived himself to be arrested under those circumstances.

**Applicant Details**

First Name **Cheyanna**  
 Middle Initial **N**  
 Last Name **Fuchs**  
 Citizenship Status **U. S. Citizen**  
 Email Address [cfuchs@law.pace.edu](mailto:cfuchs@law.pace.edu)  
 Address

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Street

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City

**Hopewell Junction**

State/Territory

**New York**

Zip

**12533**

Country

**United States**

Contact Phone  
 Number **5514861770**

**Applicant Education**

BA/BS From **Pace University**  
 Date of BA/BS **December 2019**  
 JD/LLB From **Pace University School of Law**  
<http://www.law.pace.edu>  
 Date of JD/LLB **May 1, 2022**  
 Class Rank **10%**  
 Law Review/  
 Journal **Yes**  
 Journal(s) **Pace Law Review**  
 Moot Court  
 Experience **Yes**  
 Moot Court  
 Name(s) **Fall 2021 National Pretrial Competition**

**Bar Admission**

## Prior Judicial Experience

Judicial  
Internships/        **Yes**  
Externships  
Post-graduate  
Judicial Law        **Yes**  
Clerk

## Specialized Work Experience

Specialized Work  
Experience        **Appellate, Bankruptcy**

## Professional Organization

Organizations        **Pace Law Review; Hearsay News; National  
Lawyers Guild; International Law Society**

## Recommenders

McLaughlin, Randolph  
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Epstein, Steven  
sepstein@barketepstein.com  
516-745-1500 (office)

Carmody, John  
JCarmody@westchesterda.net

**This applicant has certified that all data entered in this profile and  
any application documents are true and correct.**

**CHEYANNA FUCHS**

59 Elk Rd, Hopewell Junction, New York 12533 • (551) 486-1770 • cfuchs@law.pace.edu

June 23, 2021

RE: Judicial Clerkship – 2022 Term

Dear Judge:

I entered Pace University's Elisabeth Haub School of Law in January 2020, in the school's accelerated Juris Doctor program, and I am now a rising 3L, ranked in the top 10% of the combined full-time class. I have also been named the Executive Productions Editor for the PACE LAW REVIEW. I am writing to express my strong interest in a judicial clerkship in your chambers following my graduation in May 2022.

My practical, academic, and extracurricular experiences and roles have helped me to refine and demonstrate the practical legal and professional skills I will need to be a strong judicial clerk. This summer, as a legal intern in the United States Attorney's Office, EDNY, Civil Division, I will use and build upon my strong research, writing and related legal skills while working on a wide range of litigation. This internship has already allowed me to further strengthen my oral communication skills by providing me the opportunity to present an oral argument in the United States District Court for the Eastern District of New York. Previously, as an intern in the Appeals and Special Litigation Bureau in the Westchester County District Attorney's Office, I performed extensive legal research on complex, and often previously unfamiliar, substantive and procedural issues. As an intern in that office, I also drafted an appeal for submission to the Second Department that addressed the validity of an appeal waiver as a result of a negotiated plea and the appropriateness of the imposed sentence. Previously, as a legal assistant, I was responsible for tracking, organizing, and preparing court documents for as many as twenty cases a day, thereby honing a sharp attention to detail and the time management and organization skills I will need as a law clerk. These experiences also refined my ability to effectively communicate pertinent information with attorneys, courts, and clients.

My practical experiences, along with my experience on the PACE LAW REVIEW, have also honed my ability to edit and cite-check complex legal writing efficiently and sharpened my attention to detail. Because of my strong research and writing skills, along with my great knowledge of the Bluebook, I was a final candidate for Editor-in-Chief and was ultimately selected to serve as Executive Productions Editor for the PACE LAW REVIEW. I am eager to bring my skills, drive, and reliability to your chambers.

Enclosed please find my resume, undergraduate transcript, law school transcript, writing sample[s], and letters of recommendation from Professor Randolph McLaughlin, Professor Steven Epstein, and John Carmody, Esq., the Appeals & Special Litigation Bureau Chief and my supervisor at the Westchester County District Attorney's Office.

I would welcome the opportunity to meet with you to further discuss a clerkship in your chambers. Thank you for your consideration.

Respectfully Submitted,



*Cheyanna Fuchs*

Encls.



**CHEYANNA FUCHS**59 Elk Rd, Hopewell Junction, New York 12533 • (551) 486-1770 • [cfuchs@law.pace.edu](mailto:cfuchs@law.pace.edu)**EDUCATION****Elisabeth Haub School of Law at Pace University, White Plains, NY**

Juris Doctor, expected May 2022 (January Accelerated Class)

GPA: 3.68 Class Rank: 16/202, Top 10%

Honors: Full Tuition Merit Scholarship; Deans List (All Semesters)

Activities: PACE LAW REVIEW, Executive Productions Editor (2021–22), Junior Associate (2020–21);  
Hearsay News, Staff Writer; Dean's Scholar (Torts); New York County Lawyers Association;  
National Lawyers Guild; Peer Leader (Spring 2021)**Pace University, Dyson College of Arts & Sciences, Pleasantville, NY**Bachelor of Science in Criminal Justice, *magna cum laude*, December 2019

GPA: 3.83

Honors: Alpha Lambda Delta (Freshman Honors Society); Alpha Chi Honor Society; Alpha Phi Sigma  
Honor Society; Writing Award (2018); Dean's List (All semesters); Trustee Recognition  
Scholarship (All four-years)

Activities: Collegiate Cheerleader; Civic Engagement Volunteer, Westchester County Corrections (2018)

**EXPERIENCE****United States Attorney's Office, Eastern District of New York, Civil Division, Brooklyn, NY***Legal Intern*, June 2021–Present

Assist Assistant United States Attorneys with case and trial preparation, including participating in witness interviews or civil depositions and performing legal research and drafting memoranda, motions, and pleadings. Research and produce written legal analysis on issues involving immigration, attorneys' fees, the Equal Access to Justice Act, social security benefits, and employment law. Draft interrogatories and document requests. Present oral arguments in federal court. Observe and assist in federal court hearings and trials.

**Westchester County District Attorney's Office, Appeals and Special Litigation Bureau, White Plains, NY***Legal Intern*, January 2021–May 2021

Conducted legal research and drafted legal memoranda on issues relating to FOIL, FOIA, extradition, pro se litigation, and resentencing laws. Researched legal procedures and requirements and drafted attorney handbook on extradition, to be used by Assistant District Attorneys (ADAs) as a reference tool and guide. Researched and analyzed new legislation in the area of resentencing (specifically the Domestic Violence Survivors Justice Act) related to the Bureau's caseload. Drafted appellate briefs and responses. Analyzed, summarized, and source-checked opposing counsel's motions and briefs in areas regarding FOIL, resentencing, sentence terms, and appeal waivers. Researched and compiled information on defense witnesses in anticipation of court proceedings.

**McCabe Coleman Ventosa & Patterson, Poughkeepsie, NY***Legal Intern/Assistant/Receptionist*, June 2019–March 2020

Organized and created client files both electronically and physically and entered client information into computer system, files, and programs. Drafted documents including NOAs, plea letters, affidavits, and client correspondence for the courts and clients. Conducted research on practice areas including landlord-tenant, corporate licensing, corporation/LLC/partnership requirements and criminal statutes. Reviewed and entered discovery work product. Prepared files and supporting documents for attorney court appearances.

**Crush & Varma Law Group PC, Goshen, NY***Legal Intern*, May 2019 – August 2019

Entered confidential data and client information into computer system, files, and programs. Drafted documents involving landlord-tenant and corporate cases including POA, HCP, and various contracts. Researched legal issues regarding liquor licensing, landlord/tenant, LLCs, and non-profits. Put together LLC kits. Accurately entered attorney's billable hours and notes into Tabs system. Correctly organized and created client files.



## Elisabeth Haub School of Law

Page: 1

**Record of:** Cheyanna Nicole Fuchs  
59 Elk Rd  
Hopewell Jct, NY 12533

**Date Issued:** 24-MAY-2021

**Social Security:** \*\*\*\*\*6983

**Issued To:** Cheyanna Fuchs  
59 Elk Rd  
Hopewell Jct, NY 12533

**Student ID:** U01300540

**Level:** Law-JD

**Campus:** White Plains

Course Level: Law-JD  
Only Admit: Fall 2016

Current Program  
College : School of Law - Full Time  
Major : Law

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
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## INSTITUTION CREDIT:

## Spring 2020

LAW 610A	Civil Procedure	4.00 A-	14.68
LAW 621	Criminal Law	4.00 A-	14.68
LAW 622C	Legal Skills I	3.00 B	9.00
LAW 631	Torts	4.00 A-	14.68
Ehrs: 15.00 GPA-Hrs: 15.00 QPts: 53.04 GPA: 3.54			

## Summer 1 2020

LAW 601	Contracts	4.00 A	16.00
LAW 622D	Legal Skills II	3.00 A-	11.01
LAW 634	Property	4.00 B+	13.32
LAW 646	Constitutional Law	4.00 B+	13.32
Ehrs: 15.00 GPA-Hrs: 15.00 QPts: 53.65 GPA: 3.58			

## Fall 2020

LAW 603	Surv. of Intellectual Property	3.00 A	12.00
LAW 625	Prof Responsibility	3.00 B	9.00
LAW 649	Evidence	4.00 A	16.00
LAW 844A	Class Actions & Mass Torts	2.00 A+	8.00
LAW 857	Env Skills & Prac./Clean Water	4.00 B+	13.32
Ehrs: 16.00 GPA-Hrs: 16.00 QPts: 58.32 GPA: 3.65			

## Spring 2021

LAW 675	Crim. Pro-Investigation	4.00 A	16.00
LAW 679	Negotiations	2.00 A	8.00
LAW 684	Trial Advocacy	4.00 A	16.00
LAW 799FP	Externship Prosecution	3.00 A	12.00
LAW 799S	Externship Prosecution Seminar	1.00 A	4.00
LAW 828	Civil Rts.Litigation;1983 Suit	2.00 A-	7.34
Ehrs: 16.00 GPA-Hrs: 16.00 QPts: 63.34 GPA: 3.96			

\*\*\*\*\* CONTINUED ON NEXT COLUMN \*\*\*\*\*

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
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## Fall 2021

## IN PROGRESS WORK

LAW 701D	Wills & Trusts	4.00	IN PROGRESS
LAW 712	Family Law	3.00	IN PROGRESS
LAW 745	Corps & P-Ships	4.00	IN PROGRESS
LAW 817A	Pre-Trial Lit. Simulation	4.00	IN PROGRESS
In Progress Credits 15.00			

## \*\*\*\*\* TRANSCRIPT TOTALS \*\*\*\*\*

	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	62.00	62.00	228.35	3.68

TOTAL TRANSFER	0.00	0.00	0.00	0.00
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OVERALL	62.00	62.00	228.35	3.68
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## \*\*\*\*\* END OF TRANSCRIPT \*\*\*\*\*

UNOFFICIAL

**NOTE:** Pace Law has a mandatory curve for all 1<sup>st</sup> year courses except for Legal Skills. The mean GPA for each course must fall between 2.5 & 2.95, where a B equates to a 3.00 and a B- equates to 2.67. A maximum of 7% of students in a class may receive a letter grade of A. Typically, only 5% of students receive an A in these courses

1/12/2021

Academic Transcript


 U01300540 Cheyanna N. Fuchs  
 Jan 12, 2021 01:03 pm

## Academic Transcript

This is not an official transcript. Courses which are in progress may also be included on this transcript.

[Transfer Credit](#)   [Institution Credit](#)   [Transcript Totals](#)

### Transcript Data

#### STUDENT INFORMATION

**Name :** Cheyanna N. Fuchs

#### Curriculum Information

##### Current Program

**College:** Dyson College Arts & Sciences

**Major and Department:** Criminal Justice, Criminal Justice

**Minor:** Psychology

**Minor:** Pre-Law

\*\*\*Transcript type:OFFC is NOT Official \*\*\*

#### DEGREE AWARDED:

**Awarded:** Bachelor of Science   **Degree Date:** Dec 20, 2019

**Institutional Honors:** Magna Cum Laude

#### Curriculum Information

**Major:** Criminal Justice

**Minor:** Psychology

**Minor:** Pre-Law

**Sought:** Bachelor of Science   **Degree Date:**

#### Curriculum Information

**Major:** Criminal Justice

**Minor:** Psychology

**Minor:** Pre-Law

#### TRANSFER CREDIT ACCEPTED BY INSTITUTION -Top-

\*\*\*\*: CLEP

Subject	Course	Title	Grade	Credit Hours	Quality Points	Course Attributes
MAT	103	Algebra	T	3.000	0.00	
MAT	104	Finite Mathematics	T	3.000	0.00	

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1/4

1/12/2021

Academic Transcript

MGT	150	Mngrl & Orgnztnl Concepts	T	3.000		0.00
		<b>Attempt Hours</b>	<b>Passed Hours</b>	<b>Earned Hours</b>	<b>GPA</b>	<b>Quality Points</b>
<b>Current Term:</b>		0.000	0.000	9.000	0.000	0.00

Unofficial Transcript

**INSTITUTION CREDIT** -Top-**Term: Fall 2016****Academic Standing:****Additional Standing:** Dean's Second Honors

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Course Attributes	Start and End Dates	R
CRJ	150	01	Intro to Criminal Justice	A-	3.000	11.10			
ENG	110	01	Composition	A	3.000	12.00			
HW	101	01	Wellness & Physical Fitness	A	2.000	8.00	LC		
MUS	110	01	Jazz	B	3.000	9.00	AOK2 AOK4		
PSY	112	01	Introduction to Psychology	A	4.000	16.00	AOK5 LC		
UNV	101	01	First-Year Smnr Unvrsty Cmmnty	P	1.000	0.00			
		<b>Attempt Hours</b>	<b>Passed Hours</b>	<b>Earned Hours</b>	<b>GPA</b>	<b>Quality Points</b>			
<b>Current Term:</b>		16.000	16.000	16.000	15.000	56.10	3.74		
<b>Cumulative:</b>		16.000	16.000	16.000	15.000	56.10	3.74		

Unofficial Transcript

**Term: Spring 2017****Academic Standing:****Additional Standing:** Dean's Second Honors

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Course Attributes	Start and End Dates	R
ART	145	01	Painting I	A-	3.000	11.10	AOK4		
CRJ	121	01	Government Administration	B+	3.000	9.90			
CRJ	346	01	Terrorism and Society	A-	3.000	11.10			
ENG	120	01	Critical Writing	A-	4.000	14.80			
SOC	102	01	Introduction to Sociology	A	3.000	12.00	AOK2 AOK5		
		<b>Attempt Hours</b>	<b>Passed Hours</b>	<b>Earned Hours</b>	<b>GPA</b>	<b>Quality Points</b>			
<b>Current Term:</b>		16.000	16.000	16.000	16.000	58.90	3.68		
<b>Cumulative:</b>		32.000	32.000	32.000	31.000	115.00	3.71		

Unofficial Transcript

**Term: Fall 2017****Academic Standing:****Additional Standing:** Dean's List First Honors

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Course Attributes	Start and End Dates	R
CIS	101	01	Introduction to Computing	A-	3.000	11.10			
CRJ	255	01	Strctr & Fnctn of Police Orgnz	A	3.000	12.00			
CRJ	261	01	Intro to Criminal Invstgtn	A	3.000	12.00			
CRJ	331	01	Strategies in Corrections Admn	A	3.000	12.00	AOK1		
CRJ	375	01	CRJ Sys Rspns to Vlncl & Chldab	A	3.000	12.00	WE		

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2/4

1/12/2021

Academic Transcript

PHI 253 01 Logic A 3.000 12.00 AOK2 AOK5

**Attempt Passed Earned GPA Quality GPA**  
**Hours Hours Hours Hours Points**

**Current Term:** 18.000 18.000 18.000 18.000 71.10 3.95  
**Cumulative:** 50.000 50.000 50.000 49.000 186.10 3.80

Unofficial Transcript

**Term: Spring 2018****Academic Standing:****Additional Standing:** Dean's Second Honors

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Course Attributes	Start and End Dates	R
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COM	200	01	Public Speaking	A	3.000	12.00			
CRJ	242	01	Crime and Public Policy	A	3.000	12.00			
CRJ	250	01	Cmnty Relations in CRJ System	A	3.000	12.00			
LAW	101	01	Business Law I	A	3.000	12.00			
POL	213	01	21st Century Politics	B+	3.000	9.90	AOK5		
PSY	206	01	Psychology and Law	A-	3.000	11.10			

**Attempt Passed Earned GPA Quality GPA**  
**Hours Hours Hours Hours Points**

**Current Term:** 18.000 18.000 18.000 18.000 69.00 3.83  
**Cumulative:** 68.000 68.000 68.000 67.000 255.10 3.81

Unofficial Transcript

**Term: Fall 2018****Academic Standing:****Additional Standing:** Dean's List First Honors

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Course Attributes	Start and End Dates	R
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ENG	201	01	Writing in the Disciplines	A-	3.000	11.10			
PSY	215	01	Psych of Cultural Diversity	A	3.000	12.00	AOK3		
PSY	304	01	Social Psychology	A	4.000	16.00			
RES	106	01	Religions of the Globe	A	3.000	12.00	AOK3		
SPA	101	01	Elementary College Spanish I	A-	3.000	11.10			

**Attempt Passed Earned GPA Quality GPA**  
**Hours Hours Hours Hours Points**

**Current Term:** 16.000 16.000 16.000 16.000 62.20 3.89  
**Cumulative:** 84.000 84.000 84.000 83.000 317.30 3.82

Unofficial Transcript

**Term: Spring 2019****Academic Standing:****Additional Standing:** Dean's List First Honors

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Course Attributes	Start and End Dates	R
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CHE	107	01	Forensic Chemistry I	A	3.000	12.00			
CRJ	230	01	Resilience in Corporate Sector	A	3.000	12.00			
CRJ	412	01	Integrity Issues in CRJ	A	3.000	12.00			
PHI	115	01	Nrmative Ethics: Cntmpry Prblms	A	3.000	12.00	AOK5		
PSY	204	01	Intro to Industrial & Org Psy	A	3.000	12.00	WE		

1/12/2021

Academic Transcript

SPA 102 01 Elementary College Spanish II B+ 3.000 9.90

**Attempt Passed Earned GPA Quality GPA**  
**Hours Hours Hours Hours Points**

**Current Term:** 18.000 18.000 18.000 18.000 69.90 3.88

**Cumulative:** 102.000 102.000 102.000 101.000 387.20 3.83

Unofficial Transcript

**Term: Fall 2019**

**Academic Standing:**

**Additional Standing:** Dean's Second Honors

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Course Attributes	Start and End Dates
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CRJ	305	01	Criminal Law	A	3.000	12.00		
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CRJ	391	01	Internship-Criminal Justice I	A	4.000	16.00		
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CRJ	402	01	Constitutional Issues in CRJ	A-	3.000	11.10		
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HIS	264	01	American Presidency 1900-Prsnt	B	3.000	9.00	AOK2	
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LAW	360	01	Advanced Business Law	A-	4.000	14.80		
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**Attempt Passed Earned GPA Quality GPA**  
**Hours Hours Hours Hours Points**

**Current Term:** 17.000 17.000 17.000 17.000 62.90 3.70

**Cumulative:** 119.000 119.000 119.000 118.000 450.10 3.81

Unofficial Transcript

**TRANSCRIPT TOTALS (UNDERGRADUATE) -Top-**

**Attempt Passed Earned GPA Quality GPA**  
**Hours Hours Hours Hours Points**

**Total Institution:** 119.000 119.000 119.000 118.000 450.10 3.81

**Total Transfer:** 0.000 0.000 9.000 0.000 0.00 0.00

**Overall:** 119.000 119.000 128.000 118.000 450.10 3.81

Unofficial Transcript

June 23, 2021

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige,  
Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

This letter is in support of Ms. Cheyanna Fuchs' application for a clerkship position in your court. She is one of our top students and a bright, personable, hardworking woman of wonderful character.

Ms. Fuchs was a student in my 2020 spring semester Torts class. Ms. Fuchs is an intelligent and dedicated student who was not afraid to ask questions, and pursues her studies with diligence until she thoroughly understands the material for the course. From my observations, I believe that she demonstrates her ability to communicate effectively and persuasively as an active participant in class. She also does a superior job in recognizing issues and applying legal principles. Her writing and legal analytical skills were excellent.

Finally, In addition to her academic and professional strengths, Ms. Fuchs has other outstanding qualities. She is a mature, thoughtful person, and impresses me as a person of high integrity. Additionally, I found her to be highly motivated. Of the many law students that I have had the pleasure of working with over my thirty years at the Pace School of Law, Ms. Fuchs is one of the best and brightest students that I have the pleasure of working with. I therefore recommend Ms. Fuchs without any reservations for a clerkship in your court.

Yours truly,

Randolph M. McLaughlin  
Professor of Law

Randolph McLaughlin - [rmclaughlin@law.pace.edu](mailto:rmclaughlin@law.pace.edu)

June 23, 2021

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige,  
Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I am writing this letter in strong support of Cheyanna Fuchs' application for a clerkship in your chambers. I am a founding partner at Barkett Epstein Kearon Aldea & LoTurco, LLP and have been practicing since 1993. I am admitted to the New York State Bar, First Department, 1992; Connecticut Bar, 1992; United States Supreme Court, 1993 and United States District Court S.D.N.Y., N.D.N.Y. and E.D.N.Y., 1993.

I met Ms. Fuchs through my service as an adjunct professor of law at the Elisabeth Haub School of Law at Pace University where I have taught trial practice since 1998. I had the pleasure of having Ms. Fuchs as a student in my Trial Advocacy class during the Spring 2021 semester. Through this experience, I have come to learn she is a hard-working, organized, intelligent individual with a bright future. I am sure she will be a fantastic law clerk and a great attorney.

While a student in my class, Ms. Fuchs has shown through various trial simulations that she possesses a strong ability to communicate orally as well as in writing. She has very strong analytical abilities and can quickly analyze the facts in a case, identify key issues and appropriately apply them to the law. Additionally, her knowledge of the evidentiary rules has shined throughout the trial setting of the class. She always comes into my class fully prepared and is an eager participant, consistently contributing to the class discussion. This has made it a pleasure to have her in the class and made it easy to teach her.

Preparation for Trial Advocacy class requires significantly more than most classes. Students quickly learn that the more they put into their preparation for class, the more reward they will get from their efforts. Ms. Fuchs was one of the students I could always count on to be most prepared and do demonstrations of the exercises each week. Ms. Fuchs' integrity, dedication and drive presented in her work, and continued to impress me throughout the semester. She indulges herself into her work while exhibiting a great passion for what she is doing. Her motivation is admirable and rare. Her positive energy, maturity, and eagerness to grow are additional assets she possesses. It was a pleasure having Ms. Fuchs in my class.

It was remarkable to see how well she soaked up the information provided to her during critiques and how she implemented suggestions into her future performances. The critique method of teaching requires students to accept they are not perfect and seek to improve themselves. This is often a difficult barrier to overcome with some of the more gifted students such as Ms. Fuchs. Ms. Fuchs will succeed in her career because she accepts she can always improve and will always seek others to learn from.

I know she will make a great judicial clerk and for that reason it is my honor to give her this recommendation. If there are any specific questions you have or wish to discuss her qualifications further, please contact me.

Steven Epstein, Esq

Steven Epstein - [sepstein@barketepstein.com](mailto:sepstein@barketepstein.com) - 516-745-1500 (office)



June 23, 2021

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige,  
Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I am writing this letter as a reference for Cheyanna Fuchs, who worked as an intern in the Westchester District Attorney's Office during her spring 2021 semester at Pace Law School. Cheyanna was assigned to the Appeals and Special Prosecution Division and worked under my direct supervision. During her internship, Cheyanna displayed a keen ability to quickly grasp assignments and consistently deliver an exemplary work product. With her demonstrated research and writing skills, it soon became apparent that she could take on increasingly challenging projects, including preparation of a long-needed extradition handbook and an appellate brief. She also worked closely with the Assistant District Attorney assigned to handle the Office's first case under the newly enacted Domestic Violence Survivors Justice Act, a particularly challenging task given the lack of judicial authority interpreting the requirements of the statute.

It should be noted that Cheyanna excelled under less than ideal circumstances. Due to the COVID-19 restrictions in our Office, her internship was entirely virtual. Consequently, she was required to work, for the most part, without direct daily supervision and did so without incident or complaint. She was readily available to assist whenever called upon, regularly communicated with whoever was supervising a particular project, and always completed assignments ahead of schedule.

In short, Cheyanna displayed the maturity, legal aptitude and personal characteristics that will ensure her success in the legal profession, regardless of where her career takes her. She will undoubtedly be a tremendous asset to your office.

Miriam E. Rocah  
DISTRICT ATTORNEY

John Carmody  
Assistant District Attorney  
Bureau Chief, Special Litigation  
914-995-4164

John Carmody - JCarmody@westchesterda.net

**Cheyanna Fuchs**  
**59 Elk Road**  
**Hopewell Junction, NY 12533**  
**(551) 486-1770**

The attached writing sample is an excerpt from an appellate brief I drafted while interning at the Westchester County District Attorney's Office in their Appeals and Special Litigation Bureau. The brief was later submitted to the Second Department. The case involved sexual conduct between appellant and a person under the age of 11. The appellant pled guilty to criminal sexual act in the first degree in the trial court and subsequently received a determinate sentence of 12 years imprisonment and 15 years of post-release supervision. In consideration of the bargained-for-plea, appellant also waived his appellate rights. Appellant raised two issues on appeal:

1. Appellant's waiver of his appellate rights was invalid; and
2. Appellant's sentence is excessive.

On behalf of the Westchester County District Attorney's Office, I drafted the People's brief. The citations have been formatted in accordance with the Office's standards using the New York Law Reports Style Manual. With permission from the Westchester County District Attorney's Office, I have included the section of the brief addressing the validity of appellant's waiver as my writing sample.

**POINT I****DEFENDANT KNOWINGLY, INTELLIGENTLY,  
AND VOLUNTARILY PLED GUILTY AND  
VALIDLY WAIVED HIS RIGHT TO APPEAL.**

After several months of negotiations, defendant agreed to plead guilty to the charged crime in exchange for a sentence which also specifically covered uncharged crimes against three additional child victims. In exchange for such a beneficial plea, defendant agreed to waive his right to appeal. Nevertheless, defendant argues on appeal, his oral waiver was ineffective because it did not include a written waiver as well. He does so in order to challenge the promised sentence as excessive.<sup>2</sup> These claims have no merit.

The right to appeal may be waived by a defendant in consideration of a plea agreement (*People v Moissett*, 76 NY2d 909, 911 [1990]). In order for the waiver to be valid, the record must demonstrate that the waiver was made “voluntarily, knowingly, and intelligently” (*People v Sanders*, 25 NY3d 337, 339-41 [2015]). That is, a defendant must have “a full appreciation of the consequences” of such a waiver (*People v Seaberg*, 74 NY2d 1, 11 [1989]). Trial courts are not required to “engage in any particular litany,” but the record must establish that the defendant understood that an appeal waiver “is separate and distinct from those rights automatically forfeited upon a plea of guilty” (*People v Lopez*, 6 NY3d 248, 256

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<sup>2</sup> Notably, defendant does not now challenge the validity of his guilty plea on appeal.

[2006]). “Appeal waivers using such shorthand pronouncements are enforceable so long as the totality of the circumstances reveals that the defendant understood the nature of the appellate rights being waived” (*People v Thomas*, 34 NY3d 545, 559 [2019]).

The current record demonstrates that the court sufficiently assured that the defendant knowingly, intelligently, and voluntarily gave up his right to appeal as a condition of the bargained-for plea agreement. The waiver colloquy was thorough, and more importantly, separate and apart from the discussion regarding the constitutional rights that defendant was automatically relinquishing upon his guilty plea.

The court first asked defendant if he understood the constitutional rights he was unavoidably waiving by virtue of the plea, listing each of them. Defendant responded, “Yes,” each time (P: 8). Then, the court explained to defendant his right to appeal his conviction and sentence to a “higher court” (P: 10). Defendant stated he understood his appellate rights and acknowledged that if he waived these rights, his conviction and sentence would not be reviewed by a higher court and would be final (P: 10-11). Defendant significantly also affirmed that he had the opportunity to fully discuss the waiver of the right to appeal with his attorney (P: 11). Defendant avowed he was voluntarily waiving these rights in consideration of the beneficial plea (P: 11).

As the record demonstrates, defendant was first informed of his appellate rights then clearly told he was giving up his right to appeal as a condition of the negotiated guilty plea (*Sanders*, 25 NY3d at 338-342 [waiver of right to appeal valid where court adequately described right to defendant, who had opportunity to discuss waiver with counsel]. In fact, defendant's waiver of the right to appeal was in line with those held by the Court of Appeals to be valid (*see Sanders*, 25 NY3d 337; *Lopez*, 6 NY3d at 248).

Defendant contends, however, that the colloquy does not demonstrate that his waiver was knowingly, intelligently, and voluntarily entered because the court's explanation of the waiver drew only one-word responses ("yes") to the questions posed (Appellant's Brief, p. 10). The court's questions regarding the waiver were straightforward, leaving no uncertainty to the interpretation of defendant's unequivocal answer of "yes." Additionally, the court did not mischaracterize the nature of the right to appeal or commingle the right with those that survive a plea. The fact that the language and question formation exercised by the court called for one-word answers from defendant does not render the waiver invalid (*see Lopez*, 6 NY3d at 253-54, 257; *cf. People v Seck*, 167 AD3d 782 [2d Dept 2018]).

Defendant also asserts that he did not validly waive his right to appeal because he did not execute a written waiver of appellate rights form (Appellant's

Brief, pp. 8-10). Contrary to defendant's claim, the omission of a written waiver is not "dispositive" of the matter (see Appellant's Brief p. 8). A written waiver alone "does not [ ] provide sufficient assurance that the defendant is knowingly, intelligently, and voluntarily giving up his or her right to appeal as a condition of the plea agreement" (*People v Bradshaw*, 76 AD3d 566, 566 [2d Dept 2010], *aff'd* 18 NY3d 257 [2011]). Instead, it may be used as a supplement to the "trial court's on-the-record explanation of what a waiver of the right to appeal entails" and to clarify any possible ambiguities in that explanation (*see id.* at 566; *see also Thomas*, 34 NY3d at 560). Defendant's argument has no basis in law.

The Court of Appeals has made clear that there is no requirement that an appeal waiver be in writing in order to be valid (*see Seaberg*, 74 NY2d at 10-11; *People v Callahan* 80 NY2d 273, 280 [1992]; *Lopez*, 6 NY3d at 254-55; *Sanders*, 25 NY3d at 341-42). A written waiver is not required to establish a valid waiver, especially where, as here, the oral colloquy was not terse; rather, it was comprehensive (*Lopez*, 6 NY3d at 256). Therefore, defendant's attempt at invalidating his waiver of his right to appeal due to the absence of a written waiver is meritless since the court's colloquy sufficiently apprised defendant of his rights (*see People v Brown*, 122 AD3d 133, 145 [2d Dept 2014] [invalidating appeal waiver although record contained written waiver since "there was no discussion between the court and defendant regarding the waiver"]; *Lopez*, 6 NY3d at 257).

Defendant was given the opportunity to discuss the waiver of these rights with his attorney and affirmed that he had done so (P: 11). Yet, he now argues that his affirmative response to this inquiry does not mean he understood those rights nor sheds light on what was discussed between him and his attorney (Appellant's Brief, pp. 10). "In the absence of any record to support, [the court] do[es] not presume that counsel was somehow incompetent and failed to provide effective assistance during the plea negotiations as demanded by the Sixth Amendment" (*Thomas*, 34 NY3d at 560, citing *Lafler v Cooper*, 566 US 156 [2012]) and *McMann v Richardson*, 397 US 759 [1970]). Significantly, defendant raises no complaint regarding counsel's representation. Contrarily, instead, he affirmed he was "satisfied with the representation of his counsel" (P: 7).

In sum, the record affirmatively demonstrates defendant's knowing, intelligent, and voluntary waiver of his right to appeal.

**Applicant Details**

First Name **Erin**  
 Last Name **Gaide**  
 Citizenship Status **U. S. Citizen**  
 Email Address [egaide@email.wm.edu](mailto:egaide@email.wm.edu)  
 Address

**Address**  
**Street**  
**4435 Lydias Drive**  
**City**  
**Williamsburg**  
**State/Territory**  
**Virginia**  
**Zip**  
**23188**  
**Country**  
**United States**

Contact Phone Number **(303) 990-1317**

**Applicant Education**

BA/BS From **Ohio State University-Columbus**  
 Date of BA/BS **May 2015**  
 JD/LLB From **William & Mary Law School**  
<http://law.wm.edu>  
 Date of JD/LLB **May 15, 2022**  
 Class Rank **5%**  
 Law Review/Journal **Yes**  
 Journal(s) **William & Mary Bill of Rights Journal**  
 Moot Court Experience **No**

**Bar Admission****Prior Judicial Experience**

Judicial Internships/  
 Externships **Yes**



Post-graduate Judicial Law Clerk      **No**

**Specialized Work Experience**

**Recommenders**

Criddle, Evan J.  
ejcriddle@wm.edu  
757-221-3808  
Crocker, Katherine  
kmcrocker@wm.edu  
(757) 221-3758

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

Erin Gaide  
4435 Lydias Drive  
Williamsburg, VA 23188  
(303) 990-1317  
egaide@email.wm.edu

May 11, 2021

Judge Elizabeth W. Hanes  
Spottswood W. Robinson III and  
Robert R. Merhige, Jr., Federal Courthouse  
701 East Broad Street  
Richmond, Virginia 23219

Dear Judge Hanes:

I am a rising third-year student at William & Mary Law School, where I am ranked second (tied) in my class and am an Articles Editor on the *William & Mary Bill of Rights Journal*. I am writing to apply for a 2022–23 term clerkship in your chambers.

I am confident I can make a meaningful contribution to your chambers and the U.S. District Court for the Eastern District of Virginia. Last summer, I interned for Judge Allison Eid on the Tenth Circuit Court of Appeals. In that position, I researched and drafted an opinion for the Judge, on the issue of whether a plaintiff's complaint had been properly dismissed. I also gained valuable experience while interning last fall for the Appellate Division of a Colorado district attorney's office. There, I wrote appellate briefs for district and county court on DUI issues, specifically analyzing the novel issue of whether the COVID-19 pandemic constituted the type of extraordinary circumstance that would allow police to deny a breath test to a suspected drunk driver. I prepared concise and practical memoranda on novel issues for the prosecutors for use at hearings and in trials.

I will be continuing my work for the *William & Mary Bill of Rights Journal* next year as an Article Editor, where I will further develop my research and writing skills by editing and verifying the work of other authors. In addition, my Note, on the application of the Home Rule Provision of the Colorado Constitution to municipal public safety ordinances, was selected for publication and will appear in the next issue of the Journal. After researching the history of home rule provisions, relevant case law, and firearms statutes in Colorado, I concluded that assault weapon bans similar to one enacted in Boulder, Colorado, were not necessarily preempted by Colorado state law.

Over the next year, I plan to intern at the U.S. Attorney's Office in Richmond and then participate in William & Mary's Appellate and Supreme Court clinic, where I will have the opportunity to further develop my legal research and writing experience.

Enclosed here are my resume, transcripts, and writing sample. Letters of recommendation from Professor Katherine Mims Crocker and Professor Evan Criddle will be sent separately. I appreciate your consideration of my application and would value the opportunity to discuss my qualifications in an interview. I look forward to hearing from you.

Respectfully,  
Erin Gaide

Enclosures

**ERIN BARRETT GAIDE**

4435 Lydias Drive | Williamsburg, Virginia 23188 | egaide@email.wm.edu | (303) 990-1317

**EDUCATION*****William & Mary Law School***, Williamsburg, Virginia

J.D., expected May 2022

G.P.A.: 3.9; Class Rank: 2/230 (tied)

Honors: ***William & Mary Bill of Rights Journal***, Articles Editor  
 Center for Legal & Court Technology, Fellow (merit-based research fellowship)  
 CALI Award in Civil Procedure (awarded to the highest grade in my class)

Activities: Election Law Society

***The Ohio State University***, Columbus, OhioB.A., *cum laude*, International Studies, May 2015

G.P.A.: 3.33

Honors: Provost and Buckeye Scholarships (awards recognizing academic achievement)  
 Dean's List (6 of 8 semesters)

**EXPERIENCE*****William & Mary Appellate and Supreme Court Clinic***, Williamsburg, VirginiaProspective Staff Member

August 2021 to April 2022

***United States Attorney's Office for the Eastern District of Virginia***, Richmond, VirginiaProspective Summer Intern

Summer 2021

***First Judicial District of Colorado District Attorney, Appellate Division***, Golden, ColoradoIntern

August to November 2020

Researched case law for prosecution cases and district court appeals and wrote memoranda summarizing findings on issues including speedy trial rights and the application of the independent source doctrine to cell phone searches. Drafted answer briefs in county and district court appeals on issues of the interpretation and application of state DUI and express consent statutes.

***Judge Allison H. Eid, United States Court of Appeals for the Tenth Circuit***, Denver, ColoradoSummer extern

May to August 2020

Analyzed off-panel opinions and petitions for rehearing. Findings were summarized in emails to the judge. Assisted clerks with research for bench memos and opinions on issues including immigration and asylum law, federal criminal procedure, and qualified immunity. Drafted an opinion resolving an appeal from the dismissal of an action for late payment of court fees.

***Targeted Victory***, Arlington, VirginiaAccount Manager

April 2016 to August 2019

Designed, presented, and executed finance and advertising plans. Strategized with corporate and political clients to identify and facilitate the achievement of fundraising and advertising goals. Researched and wrote memoranda for senior leadership on political and legal issues including campaign finance and voter registration laws. Wrote fundraising emails, social media copy, and advertisement copy.

***U.S. Representative Steve Chabot***, Washington, D.C.Press Assistant / Staff Assistant / Intern

August 2014 to April 2016

Promoted from Intern to Staff Assistant, then Press Assistant within one year. Spoke with constituents, both in the office and over the phone, to learn about their views and problems and drafted fact summaries for supervising staff members. Responded to constituent mail, explaining legislation and the Congressman's position on issues of concern. Attended hearings and legislative information sessions, preparing summaries for senior staff.

## Unofficial Transcript

Note to Employers from the Office of Career Services: Transcripts will report student Grade Points Averages to the nearest hundredth. For class rank purposes, however, **official GPAs are rounded to the nearest tenth**. For example, GPAs falling between 3.05 and 3.14 are all rounded to 3.1. It is therefore important for employers to use official Law School GPAs rounded to the nearest tenth, not the GPA carried to hundredths on transcripts, when evaluating grades.

Students are ranked initially at the conclusion of one full year of legal study. Thereafter, they are ranked only at the conclusion of the fall and spring terms (i.e., no re-ranking will occur following a summer term). However, William & Mary does not have pre-determined GPA cutoffs that correspond to specific ranks.

Ranks can vary by semester and by 2L and 3L class, depending on a variety of factors including the distribution of grades within the curve established by the Law School. Students holding a GPA of 3.6 or higher will be given a numerical rank. All ranks of 3.5 and lower will be a percentage. The majority of the class will receive a percentage rather than individual class rank. In either case, it is conceivable that multiple students will share the same rank. Students with a numerical rank who share the same rank with other students are notified that they share this rank. Historically, students with a rounded GPA of 3.5 and above have usually received a percentage calculation that falls in the top 1/3 of a class. Please note: This measurement is only a general benchmark and is NOT reflective of any specific semester or individual student.

Please also note that transcripts may not look the same from student-to-student; some individuals may have used our Law School template to provide their grades, while others may have used a version from the College's online system.

Transcript Data

STUDENT INFORMATION						
Name :	Erin Gaide					
Curriculum Information						
Current Program						
Juris Doctor						
College:	School of Law					
Major and Department:	Law, Law					
***Transcript type:WEB is NOT Official ***						
DEGREES AWARDED						
Sought:	Juris Doctor	Degree Date:				
Curriculum Information						
Primary Degree						
College:	School of Law					
Major:	Law					
Institution:						
Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA	
45.000	45.000	45.000	24.000	92.50	3.85	

PAGE 2 OF 3

**INSTITUTION CREDIT** -Top-**Term: Fall 2019**

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	101	LW	Criminal Law	A	4.000	16.00	
LAW	102	LW	Civil Procedure	A	4.000	16.00	
LAW	107	LW	Torts	A-	4.000	14.80	
LAW	130	LW	Legal Research & Writing I	A	2.000	8.00	
LAW	131	LW	Lawyering Skills I	P	1.000	0.00	

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
<b>Current Term:</b>	15.000	15.000	15.000	14.000	54.80	3.91
<b>Cumulative:</b>	15.000	15.000	15.000	14.000	54.80	3.91

Unofficial Transcript

**Term: Spring 2020****Term Comments:**

Universal Pass/Fail grading was mandated by the faculty for all Spring 2020 Law classes due to the COVID-19 pandemic. Students had no option to choose ordinary letter grades.

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	108	LW	Property	P	4.000	0.00	
LAW	109	LW	Constitutional Law	P	4.000	0.00	
LAW	110	LW	Contracts	P	4.000	0.00	
LAW	132	LW	Legal Research & Writing II	P	2.000	0.00	
LAW	133	LW	Lawyering Skills II	P	2.000	0.00	

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
<b>Current Term:</b>	16.000	16.000	16.000	0.000	0.00	0.00
<b>Cumulative:</b>	31.000	31.000	31.000	14.000	54.80	3.91

Unofficial Transcript

**Term: Fall 2020**

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	115	LW	Professional Responsibility	B+	2.000	6.60	
LAW	140C	LW	Adv Writing&Practice:Criminal	A	2.000	8.00	
LAW	402	LW	Crim Pro II (Adjudication)	A	3.000	12.00	
LAW	416	LW	Family Law	A-	3.000	11.10	
LAW	761	LW	W&M Bill of Rights Journal	P	1.000	0.00	
LAW	770	LW	Prosecutor Externship	P	3.000	0.00	

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
<b>Current Term:</b>	14.000	14.000	14.000	10.000	37.70	3.77
<b>Cumulative:</b>	45.000	45.000	45.000	24.000	92.50	3.85

Unofficial Transcript

TRANSCRIPT TOTALS (LAW - FIRST PROFESSIONAL) -Top-						
	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution:	45.000	45.000	45.000	24.000	92.50	3.85
Total Transfer:	0.000	0.000	0.000	0.000	0.00	0.00
Overall:	45.000	45.000	45.000	24.000	92.50	3.85

Unofficial Transcript

COURSES IN PROGRESS -Top-						
Term: Spring 2023						
Subject	Course	Level	Title	Credit Hours		
LAW	309	LW	Evidence			3.000
LAW	401	LW	Crim Proc I (Investigation)			3.000
LAW	409	LW	International Law			3.000
LAW	453	LW	Administrative Law			3.000
LAW	485	LW	Immigration Law			3.000
LAW	761	LW	W&M Bill of Rights Journal			1.000

Unofficial Transcript

**Official Academic Transcript from:**  
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COLUMBUS, OH 43210

TELEPHONE: 614-292-9330

**Official Academic Transcript of:**  
ERIN GAIDE  
Transcript Created: 17-Mar-2021

**Requested by:**  
ERIN GAIDE  
4435 LYDIAS DRIVE  
WILLIAMSBURG, VA 23188-2823

E-Mail: erin.gaide@gmail.com



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4435 LYDIAS DRIVE  
WILLIAMSBURG, VA 23188-2823

E-Mail: erin.gaide@gmail.com

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*Adrienne Bricker*  
Adrienne Bricker  
University Registrar

THE OHIO STATE UNIVERSITY TRANSCRIPT



Name: Erin Barrett Gaide  
Student: 200144278  
DOB: 03/19/\*\*\*\*  
Print Date: 03/17/2021  
Page 1 of 2  
STUOF-ISSUED TO STUDENT

ERIN GAIDE  
4435 LYDIAS DRIVE  
WILLIAMSBURG VA 23188-2823

			<u>GPA Hours</u>	<u>Earned</u>	<u>Points</u>
Term GPA	3.850	Term Totals	20.00	20.00	77.000
Cum GPA	3.581	Cum Totals	55.00	71.00	197.000

Dean's List

Semester Transition  
The comparison below shows the conversion of your academic record.  
Cumulative GPA Totals      GPA Hours      Earned      Points  
QTR GPA : 3.581      QTR Totals : 55.00      71.00      197.000  
SEM GPA : 3.581      SEM Totals : 36.85      47.57      131.990

Institutions Attended

University of Phoenix  
Lutheran High School

External Degrees

Lutheran High School  
High School Diploma      May 31, 2011

OSU Degrees Awarded

Degree: Bachelor of Arts  
Confer Date: May 10, 2015  
Degree Honors: Cum Laude  
Plan: International Studies Major  
Sub-Plan: Security and Intelligence, International Studies

Beginning of Undergraduate Record

Autumn 2011 Quarter

Program: Humanities  
Plan: Arabic Major  
Plan: International Studies Secondary Major

Course	Description	Attempted	Earned	Grade	Points
ARABIC 101.01	Elm Mdn Std Arab 1	5.00	5.00	B+	16.500
ARTSSCI 100.06H	ASC College Survey	1.00	1.00	S	0.000
CHEM 101	Elementary Chem	5.00	5.00	B-	13.500
INTSTD 350H	Intro Intelligence	5.00	5.00	A	20.000

Test Credits Applied Toward Humanities

Course	Description	Attempted	Earned	Grade	Points
ENGLISH 110.01H	H Fst-Yr Engrl Comp	0.00	5.00	EM	0.000
ENGLISH 110.02H	H Fst-Yr Engrl Comp	0.00	5.00	EM	0.000
SPANISH 101.01	Elemntary 1:Classrm	0.00	5.00	EM	0.000
Test Trans GPA:	0.000	Transfer Totals:	0.00	15.00	0.000

GPA Hours	Earned	Points
15.00	31.00	50.000
3.333	3.333	50.000

Winter 2012 Quarter

Program: Humanities  
Plan: Arabic Major  
Plan: International Studies Secondary Major

Course	Description	Attempted	Earned	Grade	Points
ARABIC 102.01	Elm Mdn Std Arab 2	5.00	5.00	A-	18.500
CHEM 102	Elementary Chem	5.00	5.00	B	15.000
INTSTD 501	Selected Problems	5.00	5.00	A	20.000
LINGUIST 372H	Lang & Soc Id-USA	5.00	5.00	B+	16.500

GPA Hours	Earned	Points
20.00	20.00	70.000
3.428	3.428	120.000

Dean's List

Spring 2012 Quarter

Program: Humanities  
Plan: Arabic Major  
Plan: International Studies Secondary Major

Course	Description	Attempted	Earned	Grade	Points
ARABIC 103.01	Elm Mdn Std Arab 3	5.00	5.00	A	20.000
INTSTD 230H	Rise & Fall Sov Un	5.00	5.00	A-	18.500
INTSTD 553	Terror & Terrorism	5.00	5.00	A-	18.500
MEDIEVAL 214	Gold Age Islam Civ	5.00	5.00	A	20.000

Autumn 2012 Semester

Program: Arts and Sciences  
Plan: Arabic Major  
Plan: International Studies Secondary Major

Course	Description	Attempted	Earned	Grade	Points
ARABIC 1103.01	Int Mdn Arabic 1	4.00	4.00	A-	14.800
INTSTD 3400	Anly&Display Data	3.00	3.00	A-	11.100
POLITSC 1100	Intro Amer Politics	3.00	3.00	A	12.000
POLITSC 4318	Pltics Intrntl Trrs	3.00	3.00	A	12.000
PSYCH 1100	Intro Psychology	3.00	3.00	A	12.000

GPA Hours	Earned	Points
16.00	16.00	61.900
3.668	3.668	193.890

Dean's List

Spring 2013 Semester

Program: Arts and Sciences  
Plan: Arabic Major  
Plan: International Studies Secondary Major

Course	Description	Attempted	Earned	Grade	Points
ANTHROP 3305	Intro Forensic Ant	3.00	3.00	A	12.000
ARABIC 2104	Int Mdn Arabic 2	4.00	4.00	B	12.000
EDUPAES 1169.07	Tae Kwon Do 1	1.00	1.00	A	4.000
INTSTD 5702	Resh Orgd Violence	3.00	3.00	A-	11.100
INTSTD 5703	Practcm Intl Anlys	3.00	3.00	A	12.000

GPA Hours	Earned	Points
14.00	14.00	51.100
3.664	3.664	244.990

Dean's List

Summer 2013 Term

Program: Arts and Sciences  
Plan: Arabic Major  
Plan: International Studies Secondary Major

Course	Description	Attempted	Earned	Grade	Points
ECON 2002.01	Prin Macroeconomic	3.00	3.00	A-	11.100
HISTART 2001	Western Art 1	3.00	3.00	A	12.000
INTSTD 4560	Coop&Conf Glib Econ	3.00	3.00	B+	9.900

GPA Hours	Earned	Points
9.00	9.00	33.000
3.664	3.664	277.990

Dean's List

Autumn 2013 Semester

Program: Arts and Sciences  
Plan: Arabic Major  
Plan: International Studies Secondary Major

Course	Description	Attempted	Earned	Grade	Points
ARABIC 2701	Class&Medvl-Trn	3.00	3.00	A	12.000
ARABIC 3105	Int Litry Arab 1	4.00	4.00	B+	13.200
HISTORY 1681	World Hist to 1500	3.00	3.00	A	12.000
POLITSC 4315	Intl Sec&Cause War	3.00	3.00	A-	11.100
SOCIOL 3410	Criminology	3.00	3.00	A	12.000



*Adrienne Bricker*  
Adrienne Bricker  
University Registrar

## THE OHIO STATE UNIVERSITY TRANSCRIPT



Name: Erin Barrett Gaide  
Student: 200144278  
DOB: 03/19/\*\*\*\*  
Print Date: 03/17/2021  
Page 2 of 2  
STUOF-ISSUED TO STUDENT

		<u>GPA Hours</u>	<u>Earned</u>	<u>Points</u>
Term GPA	3.768	Term Totals	16.00	60.300
Cum GPA	3.683	Cum Totals	91.85	338.290

## Dean's List

## Spring 2014 Semester

Program: Arts and Sciences  
Plan: Arabic Major  
Plan: International Studies Secondary Major  
Subplan: Security & Intelligence, Intl Studies Specialization

Course	Description	Attempted	Earned	Grade	Points
ARABIC	4106 Int Litry Arab 2	4.00	4.00	B+	13.200
COMM	3597.02 Media Terror	3.00	3.00	B+	9.900
ENR	2100 Intro Envrnmntl Sc	3.00	3.00	C	6.000
HISTORY	1682 Wld Hist 1500-Pres	3.00	3.00	A-	11.100
PHILOS	1500 Intro to Logic	3.00	3.00	A-	11.100

		<u>GPA Hours</u>	<u>Earned</u>	<u>Points</u>
Term GPA	3.206	Term Totals	16.00	51.300
Cum GPA	3.612	Cum Totals	107.85	389.590

## Autumn 2014 Semester

Program: Arts and Sciences  
Plan: International Studies Major  
Subplan: Security and Intelligence, International Studies Specialization  
Plan: Arabic Minor

Course	Description	Attempted	Earned	Grade	Points
INTSTD5	5191 Stdnt Intern Prog	3.00	3.00	S	0.000

		<u>GPA Hours</u>	<u>Earned</u>	<u>Points</u>
Term GPA	0.000	Term Totals	0.00	0.000
Cum GPA	3.612	Cum Totals	107.85	389.590

## Spring 2015 Semester

Program: Arts and Sciences  
Plan: International Studies Major  
Subplan: Security and Intelligence, International Studies Specialization

Course	Description	Attempted	Earned	Grade	Points
NURSING	2367 Writing Hlthcare US	3.00	3.00	C	6.000

		<u>GPA Hours</u>	<u>Earned</u>	<u>Points</u>
Term GPA	2.000	Term Totals	3.00	6.000
Cum GPA	3.568	Cum Totals	110.85	395.590

## Undergraduate Career Totals

Cum GPA:	3.568	Cum Totals	110.85	395.590
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\*\*\*End of Undergraduate Transcript\*\*\*



OFFICE OF THE UNIVERSITY REGISTRAR  
STUDENT ACADEMIC SERVICES BUILDING, 5<sup>TH</sup> FLOOR  
281 WEST LANE AVENUE  
COLUMBUS, OH 43210-1132  
TELEPHONE: 614-292-9330  
EMAIL: REGISTRAR@OSU.EDU

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This transcript cannot be released to another person, agency or organization except to officials internal to your own organization or agency who have a reasonable business use for the information. Release to other parties requires written consent of the student.

**ACCREDITATION**

The Ohio State University (Columbus, Lima, Mansfield, Marion, Newark and the Agricultural Technical Institute, Wooster, Ohio) is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools as a degree-granting institution at the associate, baccalaureate, masters, professional and doctoral levels.

**DETAILED TRANSCRIPT KEY**

For a more detailed version of this transcript key including information on good standing, probation, dismissal and the definition of enrollment status, please visit <http://registrar.osu.edu/alumni/transcriptkey.asp>.

**GRADING SYSTEM**

A	• Excellent.....4.0 Pts	K	• Transferred Credit.....0 Pts
A-	• Excellent.....3.7 Pts	I	• Incomplete.....0 Pts
B+	• Above Average.....3.3 Pts	IP	• In Progress.....0 Pts
B	• Above Average.....3.0 Pts	IX	• Extension of Incomplete.....0 Pts
B-	• Above Average.....2.7 Pts	P	• Progress.....0 Pts
C+	• Average.....2.3 Pts	PA	• Pass.....0 Pts
C	• Average.....2.0 Pts	NP	• Non-pass.....0 Pts
C-	• Average.....1.7 Pts	R	• Registered to Audit.....0 Pts
D+	• Poor.....1.3 Pts	S	• Satisfactory.....0 Pts
D	• Poor.....1.0 Pts	U	• Unsatisfactory.....0 Pts
E	• Failure.....0 Pts	W	• Withdrew.....0 Pts
EM	• Examination Credit.....0 Pts	NG	• Grade unreported by instructor.....0 Pts
EN	• Failure-Non Attendance.....0 Pts	NEN	• EN grade for PA/NP course.....0 Pts
		UEN	• EN grade for S/U course.....0 Pts

# notation denotes a course involved in the forgiveness or substitution of grades - see Recalculation of Grades

**SPECIAL COURSE NUMBER NOTATIONS**

E suffix	Honors embedded course
H suffix	Honors course or honors version of a course
S suffix	Service Learning course
T suffix	Technical course (part of a two year technical program)

**RECALCULATION OF GRADES**

**FORGIVENESS OR SUBSTITUTION OF GRADES:** Students may petition their enrollment unit to repeat a course, and after completing the course the second time, have the original course credit and grade excluded from the calculation of the student's cumulative point-hour ratio, but remain on the student's official permanent record. The course or courses being substituted or repeated will bear the symbol "#" to the left of the grade.

**PERMITTED TO RESTART GPA or FRESH START:** An undergraduate student who enrolls in the university after an absence of five or more years may petition to have his/her GPA recalculated. If the petition is approved, the student resumes his/her academic program with no cumulative GPA. All courses taken will remain on the permanent record.

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**TRANSCRIPT KEY****CALENDAR**

- The semester system replaced the quarter system for the university in summer 2012
- The semester system replaced the quarter system for the College of Law in autumn 1984

**UNIVERSITY CLASS RANKING SYSTEM**

Student rank in all undergraduate colleges is based on total credit hours completed and recorded. Graduate students are not ranked. Professional students are ranked according to progress within their curriculum.

**Semester Calendar**

Rank	Earned Hours
Freshman	0 through 29
Sophomore	30 through 59
Junior	60 through 89
Senior	90 and up

**Quarter Calendar**

Rank	Earned Hours
Freshman	0 through 44
Sophomore	45 through 89
Junior	90 through 134
Senior	135 and up

**COURSE NUMBERING SYSTEM****SEMESTER CALENDAR**

1000-1099	UG (Undergraduate) - Non Credit Courses Non-credit courses for orientation, remedial, or other non-college-level experiences. These are courses in addition to a program's graduation requirements.
1100-1999	UG - Introductory Level Undergraduate Courses Basic courses providing undergraduate credit, but not to be counted toward major or field of specialization in any department. Courses at this level are beginning courses, required or elective courses that may be a prerequisite to other courses.
2000-2999	UG - Intermediate Level Undergraduate Courses Intermediate courses providing undergraduate credit and may be counted toward a major or field of specialization.
3000-3999	UG - Upper Level Undergraduate Courses Upper Level courses providing undergraduate credit that may be counted toward a major or field of specialization.
4000-4999	UG - Advanced Level Undergraduate Courses Advanced Level courses providing undergraduate credit that may be counted toward a major or field of specialization. Graduate students may enroll in and receive graduate credit for 4000-level courses outside their own graduate program.
5000-5999	UG and G (Graduate) - Dual Career Level Courses Courses that are regularly offered for both graduate credit and undergraduate credit. Advanced Level courses providing undergraduate credit that may be counted toward a major or field of specialization. Foundational coursework and research providing graduate or professional credit.
6000-6999	G - Foundational Level Graduate and Professional Courses Foundational courses and research providing graduate or professional credit.
7000-7999	G - Intermediate Level Graduate and Professional Courses Intermediate courses and research providing graduate or professional credit.
8000-8999	G - Advanced Level Graduate and Professional Courses Advanced courses and research providing graduate or professional credit.

**Quarter Calendar**

000-099	Non-Credit Courses (except certain seminars and colloquia) for orientation, remedial, or other non-college-level experiences. Credit is not applicable to Graduation Requirements.
100-199	Basic Courses providing Undergraduate Credit but not to be counted on a major or field of specialization in any department. Beginning Courses, Required, or Elective Courses that may be prerequisite to other courses.
200-299	Basic Courses providing Undergraduate Credit and may be counted on a major or field of specialization.
300-499	Intermediate Courses providing Undergraduate Credit or Basic Professional Credit that may be counted on a major or field of specialization.
500-599	Intermediate Courses providing Undergraduate or Professional Credit that may be counted on a major or field of specialization and may provide Graduate Credit only in other departments.
600-699	Courses providing Undergraduate or Professional Credit that may be counted on a major or field of specialization, and may provide Graduate Credit (in all departments).
700-799	Advanced Courses providing Undergraduate, Graduate, or Professional Credit.
800-999	Courses providing Graduate Credit and are open to undergraduates only with the approval of the Vice Provost for Research and Dean of the Graduate School.



**Official Academic Transcript from:**  
THE OHIO STATE UNIVERSITY  
UNIVERSITY REGISTRAR  
540 STUDENT ACADEMIC SVC BLDG  
281 W LANE AVE  
COLUMBUS, OH 43210

TELEPHONE: 614-292-9330

**Official Academic Transcript of:**  
ERIN GAIDE  
Transcript Created: 17-Mar-2021

**Requested by:**  
ERIN GAIDE  
4435 LYDIAS DRIVE  
WILLIAMSBURG, VA 23188-2823

E-Mail: erin.gaide@gmail.com



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ERIN GAIDE  
4435 LYDIAS DRIVE  
WILLIAMSBURG, VA 23188-2823

E-Mail: erin.gaide@gmail.com

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**Colleges and Universities**

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*Adrienne Bricker*  
Adrienne Bricker  
University Registrar

THE OHIO STATE UNIVERSITY TRANSCRIPT



Name: Erin Barrett Gaide  
Student: 200144278  
DOB: 03/19/\*\*\*\*  
Print Date: 03/17/2021  
Page 1 of 2  
STUOF-ISSUED TO STUDENT

ERIN GAIDE  
4435 LYDIAS DRIVE  
WILLIAMSBURG VA 23188-2823

			<u>GPA Hours</u>	<u>Earned</u>	<u>Points</u>
Term GPA	3.850	Term Totals	20.00	20.00	77.000
Cum GPA	3.581	Cum Totals	55.00	71.00	197.000

Dean's List

Semester Transition  
The comparison below shows the conversion of your academic record.  
Cumulative GPA Totals      GPA Hours      Earned      Points  
QTR GPA : 3.581      QTR Totals : 55.00      71.00      197.000  
SEM GPA : 3.581      SEM Totals : 36.85      47.57      131.990

Institutions Attended

University of Phoenix  
Lutheran High School

External Degrees

Lutheran High School  
High School Diploma

May 31, 2011

OSU Degrees Awarded

Degree: Bachelor of Arts  
Confer Date: May 10, 2015  
Degree Honors: Cum Laude  
Plan: International Studies Major  
Sub-Plan: Security and Intelligence, International Studies

Beginning of Undergraduate Record

Autumn 2011 Quarter

Program: Humanities  
Plan: Arabic Major  
Plan: International Studies Secondary Major

Course	Description	Attempted	Earned	Grade	Points
ARABIC 101.01	Elm Mdn Std Arab 1	5.00	5.00	B+	16.500
ARTSSCI 100.06H	ASC College Survey	1.00	1.00	S	0.000
CHEM 101	Elementary Chem	5.00	5.00	B-	13.500
INTSTD 350H	Intro Intelligence	5.00	5.00	A	20.000

Test Credits Applied Toward Humanities

Course	Description	Attempted	Earned	Grade	Points
ENGLISH 110.01H	H Fst-Yr Engrl Comp	0.00	5.00	EM	0.000
ENGLISH 110.02H	H Fst-Yr Engrl Comp	0.00	5.00	EM	0.000
SPANISH 101.01	Elemntary 1:Classrm	0.00	5.00	EM	0.000
Test Trans GPA:	0.000	Transfer Totals:	0.00	15.00	0.000

GPA Hours	Earned	Points
15.00	31.00	50.000
3.333	3.333	50.000

Winter 2012 Quarter

Program: Humanities  
Plan: Arabic Major  
Plan: International Studies Secondary Major

Course	Description	Attempted	Earned	Grade	Points
ARABIC 102.01	Elm Mdn Std Arab 2	5.00	5.00	A-	18.500
CHEM 102	Elementary Chem	5.00	5.00	B	15.000
INTSTD 501	Selected Problems	5.00	5.00	A	20.000
LINGUIST 372H	Lang & Soc Id-USA	5.00	5.00	B+	16.500

GPA Hours	Earned	Points
20.00	20.00	70.000
3.428	3.428	120.000

Dean's List

Spring 2012 Quarter

Program: Humanities  
Plan: Arabic Major  
Plan: International Studies Secondary Major

Course	Description	Attempted	Earned	Grade	Points
ARABIC 103.01	Elm Mdn Std Arab 3	5.00	5.00	A	20.000
INTSTD 230H	Rise & Fall Sov Un	5.00	5.00	A-	18.500
INTSTD 553	Terror & Terrorism	5.00	5.00	A-	18.500
MEDIEVAL 214	Gold Age Islam Civ	5.00	5.00	A	20.000

Autumn 2012 Semester

Program: Arts and Sciences  
Plan: Arabic Major  
Plan: International Studies Secondary Major

Course	Description	Attempted	Earned	Grade	Points
ARABIC 1103.01	Int Mdn Arabic 1	4.00	4.00	A-	14.800
INTSTD 3400	Anly&Display Data	3.00	3.00	A-	11.100
POLITSC 1100	Intro Amer Politics	3.00	3.00	A	12.000
POLITSC 4318	Pltics Intrntl Trrs	3.00	3.00	A	12.000
PSYCH 1100	Intro Psychology	3.00	3.00	A	12.000

GPA Hours	Earned	Points
16.00	16.00	61.900
3.668	3.668	193.890

Dean's List

Spring 2013 Semester

Program: Arts and Sciences  
Plan: Arabic Major  
Plan: International Studies Secondary Major

Course	Description	Attempted	Earned	Grade	Points
ANTHROP 3305	Intro Forensic Ant	3.00	3.00	A	12.000
ARABIC 2104	Int Mdn Arabic 2	4.00	4.00	B	12.000
EDUPAES 1169.07	Tae Kwon Do 1	1.00	1.00	A	4.000
INTSTD 5702	Resh Orgd Violence	3.00	3.00	A-	11.100
INTSTD 5703	Practcm Intl Anlys	3.00	3.00	A	12.000

GPA Hours	Earned	Points
14.00	14.00	51.100
3.664	3.664	244.990

Dean's List

Summer 2013 Term

Program: Arts and Sciences  
Plan: Arabic Major  
Plan: International Studies Secondary Major

Course	Description	Attempted	Earned	Grade	Points
ECON 2002.01	Prin Macroeconomic	3.00	3.00	A-	11.100
HISTART 2001	Western Art 1	3.00	3.00	A	12.000
INTSTD 4560	Coop&Conf Glib Econ	3.00	3.00	B+	9.900

GPA Hours	Earned	Points
9.00	9.00	33.000
3.664	3.664	277.990

Dean's List

Autumn 2013 Semester

Program: Arts and Sciences  
Plan: Arabic Major  
Plan: International Studies Secondary Major

Course	Description	Attempted	Earned	Grade	Points
ARABIC 2701	Class&Medvl-Trn	3.00	3.00	A	12.000
ARABIC 3105	Int Litry Arab 1	4.00	4.00	B+	13.200
HISTORY 1681	World Hist to 1500	3.00	3.00	A	12.000
POLITSC 4315	Intl Sec&Cause War	3.00	3.00	A-	11.100
SOCIOL 3410	Criminology	3.00	3.00	A	12.000

*Adrienne Bricker*  
Adrienne Bricker  
University Registrar

## THE OHIO STATE UNIVERSITY TRANSCRIPT



Name: Erin Barrett Gaide  
Student: 200144278  
DOB: 03/19/\*\*\*\*  
Print Date: 03/17/2021  
Page 2 of 2  
STUOF-ISSUED TO STUDENT

Term GPA	3.768	Term Totals	<u>GPA Hours</u> 16.00	<u>Earned</u> 16.00	<u>Points</u> 60.300
Cum GPA	3.683	Cum Totals	91.85	102.57	338.290

## Dean's List

## Spring 2014 Semester

Program: Arts and Sciences  
Plan: Arabic Major  
Plan: International Studies Secondary Major  
Subplan: Security & Intelligence, Intl Studies Specialization

Course	Description	Attempted	Earned	Grade	Points
ARABIC	4106 Int Litry Arab 2	4.00	4.00	B+	13.200
COMM	3597.02 Media Terror	3.00	3.00	B+	9.900
ENR	2100 Intro Envrnmntl Sc	3.00	3.00	C	6.000
HISTORY	1682 Wld Hist 1500-Pres	3.00	3.00	A-	11.100
PHILOS	1500 Intro to Logic	3.00	3.00	A-	11.100

Term GPA	3.206	Term Totals	<u>GPA Hours</u> 16.00	<u>Earned</u> 16.00	<u>Points</u> 51.300
Cum GPA	3.612	Cum Totals	107.85	118.57	389.590

## Autumn 2014 Semester

Program: Arts and Sciences  
Plan: International Studies Major  
Subplan: Security and Intelligence, International Studies Specialization  
Plan: Arabic Minor

Course	Description	Attempted	Earned	Grade	Points
INTSTDS	5191 Stdnt Intern Prog	3.00	3.00	S	0.000

Term GPA	0.000	Term Totals	<u>GPA Hours</u> 0.00	<u>Earned</u> 3.00	<u>Points</u> 0.000
Cum GPA	3.612	Cum Totals	107.85	121.57	389.590

## Spring 2015 Semester

Program: Arts and Sciences  
Plan: International Studies Major  
Subplan: Security and Intelligence, International Studies Specialization

Course	Description	Attempted	Earned	Grade	Points
NURSING	2367 Writing Hlthcare US	3.00	3.00	C	6.000

Term GPA	2.000	Term Totals	<u>GPA Hours</u> 3.00	<u>Earned</u> 3.00	<u>Points</u> 6.000
Cum GPA	3.568	Cum Totals	110.85	124.57	395.590

## Undergraduate Career Totals

Cum GPA:	3.568	Cum Totals	110.85	124.57	395.590
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\*\*\*End of Undergraduate Transcript\*\*\*





OFFICE OF THE UNIVERSITY REGISTRAR  
STUDENT ACADEMIC SERVICES BUILDING, 5<sup>TH</sup> FLOOR  
281 WEST LANE AVENUE  
COLUMBUS, OH 43210-1132  
TELEPHONE: 614-292-9330  
EMAIL: REGISTRAR@OSU.EDU

**RELEASE OF INFORMATION**

This transcript cannot be released to another person, agency or organization except to officials internal to your own organization or agency who have a reasonable business use for the information. Release to other parties requires written consent of the student.

**ACCREDITATION**

The Ohio State University (Columbus, Lima, Mansfield, Marion, Newark and the Agricultural Technical Institute, Wooster, Ohio) is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools as a degree-granting institution at the associate, baccalaureate, masters, professional and doctoral levels.

**DETAILED TRANSCRIPT KEY**

For a more detailed version of this transcript key including information on good standing, probation, dismissal and the definition of enrollment status, please visit <http://registrar.osu.edu/alumni/transcriptkey.asp>.

**GRADING SYSTEM**

A	• Excellent.....4.0 Pts	K	• Transferred Credit.....0 Pts
A-	• Excellent.....3.7 Pts	I	• Incomplete.....0 Pts
B+	• Above Average.....3.3 Pts	IP	• In Progress.....0 Pts
B	• Above Average.....3.0 Pts	IX	• Extension of Incomplete.....0 Pts
B-	• Above Average.....2.7 Pts	P	• Progress.....0 Pts
C+	• Average.....2.3 Pts	PA	• Pass.....0 Pts
C	• Average.....2.0 Pts	NP	• Non-pass.....0 Pts
C-	• Average.....1.7 Pts	R	• Registered to Audit.....0 Pts
D+	• Poor.....1.3 Pts	S	• Satisfactory.....0 Pts
D	• Poor.....1.0 Pts	U	• Unsatisfactory.....0 Pts
E	• Failure.....0 Pts	W	• Withdrew.....0 Pts
EM	• Examination Credit.....0 Pts	NG	• Grade unreported by instructor.....0 Pts
EN	• Failure-Non Attendance.....0 Pts	NEN	• EN grade for PA/NP course.....0 Pts
		UEN	• EN grade for S/U course.....0 Pts

# notation denotes a course involved in the forgiveness or substitution of grades - see Recalculation of Grades

**SPECIAL COURSE NUMBER NOTATIONS**

E suffix	Honors embedded course
H suffix	Honors course or honors version of a course
S suffix	Service Learning course
T suffix	Technical course (part of a two year technical program)

**RECALCULATION OF GRADES**

**FORGIVENESS OR SUBSTITUTION OF GRADES:** Students may petition their enrollment unit to repeat a course, and after completing the course the second time, have the original course credit and grade excluded from the calculation of the student's cumulative point-hour ratio, but remain on the student's official permanent record. The course or courses being substituted or repeated will bear the symbol "#" to the left of the grade.

**PERMITTED TO RESTART GPA or FRESH START:** An undergraduate student who enrolls in the university after an absence of five or more years may petition to have his/her GPA recalculated. If the petition is approved, the student resumes his/her academic program with no cumulative GPA. All courses taken will remain on the permanent record.

This Academic Transcript from The Ohio State University located in Columbus, OH is being provided to you by Credentials Inc. Under provisions of, and subject to, the Family Educational Rights and Privacy Act of 1974, Credentials Inc. of Northfield, IL is acting on behalf of The Ohio State University in facilitating the delivery of academic transcripts from The Ohio State University to other colleges, universities and third parties using the Credentials' TranscriptsNetwork™.

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**TRANSCRIPT KEY****CALENDAR**

- The semester system replaced the quarter system for the university in summer 2012
- The semester system replaced the quarter system for the College of Law in autumn 1984

**UNIVERSITY CLASS RANKING SYSTEM**

Student rank in all undergraduate colleges is based on total credit hours completed and recorded. Graduate students are not ranked. Professional students are ranked according to progress within their curriculum.

**Semester Calendar**

Rank	Earned Hours
Freshman	0 through 29
Sophomore	30 through 59
Junior	60 through 89
Senior	90 and up

**Quarter Calendar**

Rank	Earned Hours
Freshman	0 through 44
Sophomore	45 through 89
Junior	90 through 134
Senior	135 and up

**COURSE NUMBERING SYSTEM****SEMESTER CALENDAR**

1000-1099	UG (Undergraduate) - Non Credit Courses Non-credit courses for orientation, remedial, or other non-college-level experiences. These are courses in addition to a program's graduation requirements.
1100-1999	UG - Introductory Level Undergraduate Courses Basic courses providing undergraduate credit, but not to be counted toward major or field of specialization in any department. Courses at this level are beginning courses, required or elective courses that may be a prerequisite to other courses.
2000-2999	UG - Intermediate Level Undergraduate Courses Intermediate courses providing undergraduate credit and may be counted toward a major or field of specialization.
3000-3999	UG - Upper Level Undergraduate Courses Upper Level courses providing undergraduate credit that may be counted toward a major or field of specialization.
4000-4999	UG - Advanced Level Undergraduate Courses Advanced Level courses providing undergraduate credit that may be counted toward a major or field of specialization. Graduate students may enroll in and receive graduate credit for 4000-level courses outside their own graduate program.
5000-5999	UG and G (Graduate) - Dual Career Level Courses Courses that are regularly offered for both graduate credit and undergraduate credit. Advanced Level courses providing undergraduate credit that may be counted toward a major or field of specialization. Foundational coursework and research providing graduate or professional credit.
6000-6999	G - Foundational Level Graduate and Professional Courses Foundational courses and research providing graduate or professional credit.
7000-7999	G - Intermediate Level Graduate and Professional Courses Intermediate courses and research providing graduate or professional credit.
8000-8999	G - Advanced Level Graduate and Professional Courses Advanced courses and research providing graduate or professional credit.

**Quarter Calendar**

000-099	Non-Credit Courses (except certain seminars and colloquia) for orientation, remedial, or other non-college-level experiences. Credit is not applicable to Graduation Requirements.
100-199	Basic Courses providing Undergraduate Credit but not to be counted on a major or field of specialization in any department. Beginning Courses, Required, or Elective Courses that may be prerequisite to other courses.
200-299	Basic Courses providing Undergraduate Credit and may be counted on a major or field of specialization.
300-499	Intermediate Courses providing Undergraduate Credit or Basic Professional Credit that may be counted on a major or field of specialization.
500-599	Intermediate Courses providing Undergraduate or Professional Credit that may be counted on a major or field of specialization and may provide Graduate Credit only in other departments.
600-699	Courses providing Undergraduate or Professional Credit that may be counted on a major or field of specialization, and may provide Graduate Credit (in all departments).
700-799	Advanced Courses providing Undergraduate, Graduate, or Professional Credit.
800-999	Courses providing Graduate Credit and are open to undergraduates only with the approval of the Vice Provost for Research and Dean of the Graduate School.

**Evan J. Criddle**  
**Ernest W. Goodrich Professor of Law**

**William & Mary Law School**  
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May 25, 2021

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige,  
Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I am delighted to recommend Erin Gaide for a judicial clerkship in your chambers. Erin is one of the best and brightest students at William & Mary Law School, and I believe she will shine as a judicial clerk.

Erin's resume reflects a variety of impressive achievements, including a merit-based Marshall-Wythe Scholarship and the CALI Award for outstanding academic achievement in Civil Procedure. Over the past two years, I have been privileged to teach Erin in three courses—Civil Procedure, Immigration Law, and International Law. In all of our interactions, Erin has distinguished herself as a serious and hard-working student with a rigorous intellect. I was not surprised, therefore, when she earned the top overall score in my Civil Procedure section (among sixty-six students). Based on her excellent class participation, I expect that Erin will receive top marks in my Immigration Law and International Law courses this semester, as well.

Aside from her impressive academic record, Erin's maturity, professionalism, and interpersonal skills suggest that she has a bright future as a legal professional. Erin expresses herself clearly and concisely. She has an excellent memory, and she asks perceptive questions. She has polished legal research and writing skills. She is a self-starter who works independently, but I have no doubt that she would also collaborate easily with others. If selected to serve as one of your clerks, I am confident that Erin would embrace your guidance and mentorship with enthusiasm. She would be a loyal and highly motivated judicial clerk.

Erin's desire to pursue a post-graduate clerkship has been inspired, in part, by an internship she completed last summer with the Honorable Allison H. Eid of the U.S. Court of Appeals for the Tenth Circuit. Erin loved every aspect of this internship experience, from preparing legal research for bench memoranda to updating Judge Eid and her clerks on recent decisions delivered by other Tenth Circuit judges. With this experience already under her belt, Erin should be well prepared to hit the ground running as a judicial clerk following her law school graduation.

In sum, I strongly recommend Erin for a clerkship in your chambers during the 2022-2023 term. Please do not hesitate to contact me by e-mail (ejcriddle@wm.edu) with any questions regarding her application. I would welcome the opportunity to speak with you about Erin's qualifications.

Best regards,

/s/

Evan J. Criddle

Evan J. Criddle - ejcriddle@wm.edu - 757-221-3808

**Katherine Mims Crocker**  
**Assistant Professor of Law**

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May 25, 2021

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige,  
Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

**Re: Erin Gaide Clerkship Recommendation**

Dear Judge Hanes:

I write to recommend Erin Gaide for a clerkship in your chambers. Erin was a student in my Property course at William & Mary Law School during the spring 2020 semester. She's downright smart, diligent, and a delight to be around. She'll make an exceptional law clerk.

Erin's record speaks for itself, but I'd love to highlight a few aspects. Erin's 3.9 grade-point average is dazzling. Even better, Erin has maintained the superior scores she received before the COVID-19 pandemic into this past fall semester, indicating not only that her excellent first semester was no fluke, but that she can overcome the extraordinary challenges that law students have faced during this time of social upheaval and remote learning. Erin also has a remarkable degree of experience with the litigation system, having worked during the last year both for Judge Allison H. Eid of the U.S. Court of Appeals for the Tenth Circuit and for the Appellate Division of the District Attorney's Office for the First Judicial District of Colorado. From speaking with Erin, I know these experiences deepened her abiding appreciation for the nature and importance of the judicial process.

Because of the COVID-19 crisis, William & Mary transitioned to remote learning after spring break last year and moved all grading to pass-fail. The passing mark that Erin received in my class, however, does not do justice to her academic abilities. Erin was an insightful and consistent contributor to class discussions. Both during lecture and regularly in office hours, she asked tough questions that showed she was digging deep into the material. Erin's exam demonstrated not only a proficiency in property law, but—more pertinent to her capacities across legal subjects—a keen analytic mind, a creative and compelling writing style, and an aptitude for identifying and evaluating competing arguments on the way to arriving at well-reasoned conclusions.

I'm also a huge fan of Erin's personal qualities. Erin may well have specific views about how the law can and should fit together, but she has always struck me as open to understanding a wide range of perspectives. She cares deeply about how the law can affect individuals and communities, and she has an intense desire to get to the bottom of complex legal problems. When speaking with Erin about her desire to clerk, I was impressed that she emphasized how she relishes the research and interpretive opportunities that hard legal questions without clear answers in precedent provide. Erin is respectful and always pleasant to communicate with. She's ambitious in the best way possible, and I have every confidence that she can achieve each goal she sets for herself.

Erin has a very bright future that I believe will begin with a clerkship for a genuinely fortunate judge. Based on my experience as a clerk for Justice Scalia of the Supreme Court and Judge Wilkinson of the U.S. Court of Appeals for the Fourth Circuit, plus as an intern for Judge Hudson of the U.S. District Court for the Eastern District of Virginia, I have no doubt that Erin will be a wonderful asset and a welcome presence in any chambers where she works.

Please let me know if I can answer any questions about Erin. I hope you'll give her application very strong consideration.

Sincerely,

/s/

Katherine Mims Crocker

Katherine Crocker - kmcrocker@wm.edu - (757) 221-3758



**Erin Barrett Gaide**

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**WRITING SAMPLE**

I prepared this brief during my Fall 2020 externship with the First Judicial District of Colorado District Attorney and have obtained the employer's consent to use it as a writing sample. This brief is substantially my own work. The names in this brief have been changed.

Plaintiff John Smith appeals the findings and order from a revocation hearing in the Department of Revenue, Division of Motor Vehicles (Department) on June 18, 2020. The Department responds to claims made in the plaintiff's opening brief.

### **STATEMENT OF THE ISSUE**

Whether the hearing officer properly found that the extraordinary circumstances exception applied when the arresting officer limited the plaintiff's testing options to a blood test.

### **STATEMENT OF THE CASE AND FACTS**

On April 25, 2020, Arvada Police Officer Jones observed Plaintiff, John Smith, speeding and driving erratically on his motorcycle. TR 6/18/20, pp 4:23-5:24. Officer Jones pulled Smith over and observed that Smith had an open bottle of fireball whiskey between the handlebars and gas tank of his motorcycle, he slurred his speech when he spoke, and his breath smelled of alcohol. TR 6/18/20, pp 5:25–6:12. Suspecting that Smith had been driving under the influence, Officer Jones led Smith through a series of roadside maneuvers which Smith was unable to complete as a sober person would. TR 6/18/20, p 7:6–8. Officer Jones then arrested Smith for driving under the influence and read him the express consent advisement off of a department-issued card. TR 6/18/20, p 7:8–13.

Officer Jones then offered Smith a blood test but said that, due to the COVID-19 pandemic, he could not offer Smith a breath test. TR 6/18/20, p 7:13–15. Arvada police officers had been instructed by a supervisor not to offer breath tests because of the pandemic. TR 6/18/20, p 11:6–8. In response, Smith refused any chemical testing. TR 6/18/20, p 7:16–17. He never requested to take a breath test. TR 6/18/20, p 9:22–23. Because Smith refused a chemical test, the Department revoked his license. TR 6/18/20, pp 7:17–8:10.

At his revocation hearing, Smith argued there was no legal basis for Officer Jones to not offer him a breath test, and therefore his license should not have been revoked because he was not offered one. TR 6/18/20, pp 15:19–16:2. The hearing officer noted that (1) Colorado was in the middle of a global pandemic; (2) the COVID-19 virus is spread by breathing and respiratory droplets; and (3) the state had taken unprecedented steps to control the spread of the virus including issuing a mask mandate. R, EX I-3.

The hearing officer concluded that Officer Jones’s limiting Smith to a blood test was due to an extraordinary circumstance outside of the officer’s control and was appropriate because of the pandemic. R, EX I-4. He also found that, even if there was no extraordinary circumstance, Smith did not request a breath test and his refusal to take a chemical test was a blanket refusal covering both breath and blood tests. R, EX I-4.

Smith now seeks judicial review of the Department’s revocation of his driver’s license. He argues that the extraordinary circumstance exception does not apply. Op. Br. at 5.

### **SUMMARY OF THE ARGUMENT**

The hearing officer properly revoked the plaintiff’s license because there is substantial evidence in the record to support the hearing officer’s determination that the COVID-19 pandemic created an extraordinary circumstance under which law enforcement could limit the choice of chemical testing to a blood test. Colorado was, and is, experiencing a global pandemic. The virus is transmitted by breathing and respiratory droplets. In light of this, it was reasonable for the Arvada Police to suspend breath tests until they could put protocols in place to protect themselves and the public from transmitting the virus. Even if the extraordinary circumstances exception did not apply, the plaintiff failed to request a breath test and refused chemical testing. Thus, the Department properly revoked his license, and this Court may affirm the agency action.

### **STANDARD OF REVIEW**

An administrative action taken pursuant to an agency’s authority is entitled to a presumption of validity. *City & Cty. of Denver v. Bd. of Adjustment*, 55 P.3d 252, 254 (Colo. App. 2002). The burden is on the party challenging the agency action to overcome the presumption that the agency’s acts were proper. *Colonial Bank v. Colo. Fin. Servs. Bd.*, 961 P.2d 579, 588 (Colo. App. 1998). Judicial review of a final determination is subject to reversal only if the court finds the agency “exceeded its constitutional or statutory authority, made an erroneous interpretation of the law, acted in an arbitrary or capricious manner, or made a determination that is unsupported by the evidence in the record.” § 42-2-126(9)(b) C.R.S. (2020).

Under this statutory standard, a reviewing court must be convinced from the record as a whole that there was not substantial evidence to support the hearing officer’s decision in order to find that the decision was arbitrary and capricious. *Baldwin v. Huber*, 223 P.3d 150, 152 (Colo. App. 2009). Substantial evidence is adequate evidence on the record to support a particular conclusion by a rational factfinder. *Benuishis v. Indus. Claim Appeals Office of State*, 195 P.3d 1142, 1145 (Colo. App. 2008).

Any determination concerning the credibility of the witnesses, the weight to be given to the evidence, and the resolution of any evidentiary conflicts is a factual matter solely within the providence of the hearing officer to decide as the trier of fact. *Baldwin*, 223 P.3d at 152. All reasonable doubts as to the correctness of rulings must be resolved in the agency’s favor. *City & Cty. of Denver*, 55 P.3d at 254. Whether the undisputed facts in an express consent case establish an extraordinary circumstances exception is a question of law and is reviewed de novo. *Long v. Colo. Dept. of Revenue*, 2012 COA 130 ¶ 25.

### **ARGUMENT**

As an initial matter, the plaintiff waived the issue of whether or not the extraordinary circumstances exception applies because he did not raise it at any point during the administrative hearing. *Chostner v. Colorado Water Quality Control Comm'n*, 2013 COA 111 ¶ 39 (issues not raised in an administrative proceeding are not preserved for review on appeal). At his hearing, the plaintiff argued the officer had no legal authority not to offer a breath test. If, however, the court does consider the plaintiff's argument, it still fails because the extraordinary circumstances exception does apply.

Under Colorado's express consent statute, a suspected drunk driver ordinarily has the right to choose between taking a blood or a breath test to determine the driver's BAC, and the arresting officer generally has a corresponding duty to provide the driver's choice of test. *See* § 42-4-1301.1(2)(a)(I) C.R.S. (2020). However, the statute also provides exceptions to the driver's right to choose between testing alternatives, including the "extraordinary circumstances" exception. § 42-4-1301.1(2)(a.5)(I) C.R.S.; *see also People v. Null*, 233 P.3d 670, 678 (Colo. 2010). "Extraordinary circumstances" includes, but is not limited to, "weather-related delays, high call volume affecting medical personnel, power outages, malfunctioning breath test equipment, and other circumstances that preclude the timely collection and testing of a blood or breath sample by a qualified person in accordance with law." § 42-4-1301.1(2)(a.5)(IV)(B) C.R.S. The law enforcement officer, not the licensee, decides whether the extraordinary circumstances exception applies. *Long*, 2012 COA 130 ¶ 27.

There is substantial evidence in the record to support the hearing officer's finding that, due to extraordinary circumstances, the Arvada Police reasonably suspended breath tests during the initial stages of the COVID-19 pandemic. Officer Jones testified that the reason he limited the plaintiff's choice of tests to a blood test was his supervisor's order due to the COVID-19

pandemic. He testified that this was not his own unilateral choice, it was a command from his direct supervisor.

The hearing officer then took appropriate judicial notice of commonly and widely-known facts about the COVID-19 pandemic and the way in which the virus is transmitted. *See* § 42-2-126(8)(d)(V)(A) C.R.S. (2020) (a hearing officer in a revocation hearing may take judicial notice of common knowledge and “general, technical, or scientific facts within the hearing officer’s own knowledge.”).

First, the hearing officer took notice of the fact that the state was in the midst of an unprecedented global pandemic. *See People v. Lucy*, 2020 CO 68 ¶ 1 (“COVID-19, the highly contagious and potentially deadly illness caused by the novel coronavirus, has triggered a global pandemic the likes of which we haven’t experienced in over a century.”). Second, the hearing officer took notice that the virus is transmitted by breathing and respiratory droplets. *See In Re Interrogatory on House Joint Resolution 20-1006*, 2020 CO 23 ¶ 5 (“Like other respiratory illnesses, COVID-19 is transmitted by close exposure to a person with the virus, particularly an infected person’s respiratory droplets from coughing or sneezing. COVID-19 may also be transmitted by touching a surface that has the virus on it and then touching one’s mouth, nose, or eyes.”). Finally, the hearing officer took notice of the extraordinary provisions Colorado had put in place to protect the public and control the spread of the virus. *See* Governor of Colorado Executive Order D-2020-138 (requiring everyone in Colorado over the age of ten to wear a facial covering in public places); *see also In Re Interrogatory on House Joint Resolution 20-1006*, 2020 CO 23 ¶ 66 (concluding that the COVID-19 pandemic was the type of extraordinary circumstance that would allow the legislature to count only working calendar days, rather than consecutive calendar days, toward the 120 day session limit for the first time in state history). In

light of these findings, it is reasonable for a law enforcement agency to suspend breath tests until protocols could be put in place to protect the police officers and the public from transmission of the virus.

The plaintiff argues that *People v. Null*, requires dismissal of this case. *Null* is readily distinguishable. First, the *Null* court found the state did not provide evidence of a non-routine or extraordinary circumstance that prevented medical personnel from responding to a request to perform a blood test and therefore did not provide evidence to show why the blood test was unavailable. 233 P.3d at 678–79. In this case there is evidence in the record showing the existence of an unprecedented global pandemic that is transmitted through breathing and respiratory droplets, in light of which it was reasonable for the Arvada Police Department to suspend breath tests. Second, the unavailability of the blood test in *Null* was due to human failure—unresponsive medical personnel. *Id.* at 674. In this case, the Arvada Police Department was responding to a pandemic that was beyond their control.

Regardless, even if there were not extraordinary circumstances present here, the plaintiff refused chemical testing. He did not once actually request to take a breath test or indicate that he would take a breath test as opposed to a blood test. The hearing officer properly found this constituted a blanket refusal to submit to either a blood or breath test, even if the extraordinary circumstances exception did not apply. *See Haney v. Colo. Dep't of Revenue*, 2015 CO 125 ¶ 16 (a hearing officer should apply an objective standard when determining whether a driver refused to submit to a chemical test, considering the driver's words and other “manifestations of willingness or unwillingness” to take a test).

The hearing officer therefore properly sustained the Department's revocation of the plaintiff's license. The plaintiff waived his extraordinary circumstances argument by not raising

it at his revocation hearing. If this Court does consider his argument on the merits, the hearing officer properly found extraordinary circumstances due to the Covid-19 pandemic. But regardless, the plaintiff refused chemical testing, and the Department revoked his license on those grounds. This Court may properly affirm the Department's revocation of the plaintiff's driver's license.

### **CONCLUSION**

For the reasons and authorities discussed above, the Department respectfully asks this Court to affirm the agency's revocation of the plaintiff's driver's license.



## Applicant Details

First Name **Natalia**  
 Last Name **Galica**  
 Citizenship Status **U. S. Citizen**  
 Email Address [ngalica@law.jmls.edu](mailto:ngalica@law.jmls.edu)  
 Address

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**State/Territory**  
**Illinois**  
**Zip**  
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**Country**  
**United States**

Contact Phone Number **7089557609**

## Applicant Education

BA/BS From **Roosevelt University**  
 Date of BA/BS **May 2017**  
 JD/LLB From **UIC John Marshall Law School**  
<http://www.jmls.edu>  
 Date of JD/LLB **May 10, 2020**  
 Class Rank **20%**  
 Law Review/Journal **Yes**  
 Journal(s) **John Marshall Law Review**  
 Moot Court Experience **Yes**  
 Moot Court Name(s) **John Marshall Law School Moot Court**

## Bar Admission

Admission(s) **Illinois**

## Prior Judicial Experience

Judicial Internships/ Externships	<b>Yes</b>
Post-graduate Judicial Law Clerk	<b>No</b>

## Specialized Work Experience

Specialized Work Experience **Appellate, Immigration**

## References

Iveliz M. Orellano  
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**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

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April 7, 2021

The Honorable Elizabeth W. Hanes  
Walter E. Hoffman  
United States Courthouse  
600 Granby Street  
Norfolk, VA 23510

Dear Judge Hanes:

My name is Natalia Galica and I work for the Office of the State Appellate Defender, an organization that represents indigent people during criminal appeals in Illinois, as an Assistant Appellate Defender. I am interested in a judicial clerkship position in your chambers beginning in August 2022.

My exceptional work ethic is largely responsible for my academic achievements thus far. During my time at Roosevelt University, I worked with several professors on independent research studies involving cyber terrorism and radicalization trends. Because of that research, I was able to present my work at a research symposium—where I won an award for my presentation--and give guest lectures to several criminal justice and political science courses. The discipline needed to evolve my academic-writing voice into a legal-writing voice paid off immensely. During my time at UIC-John Marshall Law School, I won a Best Brief award at the John J. Gibbons Criminal Procedure Moot Court competition and I advanced to semi-finals in the Dean Fred F. Herzog Moot Court Competition and the Quinnipiac Trial Advocacy Competition. I also recently published my law review comment in THE UIC- JOHN MARSHALL LAW REVIEW.

As a queer daughter of immigrants and a first-generation law student, self-sufficiency has also been one of my greatest strengths. During my undergraduate years, I balanced a full course-load with working full-time at Barnes and Noble. During law school, I worked at a number of internships and worked as a teaching assistant for appellate advocacy, criminal law, torts, and legal writing courses. That same background also helped me to become more empathetic to the struggles others face in America. I became interested in appellate litigation because it gave me the opportunity to not only help an individual client, but to make arguments to the court about how the law should change and evolve. For instance, during my time at the Office of the State Appellate Defender, I have made arguments regarding implicit racial biases and the need to recognize the impact of neurology on the actions of juveniles and emerging adults.

Excelling in these roles required me to become a thoughtful self-starter who is motivated to take initiatives. I believe this would manifest in your chambers as a clerk who is efficient, reliable, and constantly anticipating how to assist you.

I look forward to discussing with you how my experiences and strong academic record would make me an excellent clerk. Thank you for your time and consideration.

Warmest Regards,

Natalia Galica

## NATALIA GALICA

17843 65th Ct., Tinley Park, IL 60477 | ngalica@outlook.com | (708) 955-7609

### EDUCATION

**The John Marshall Law School**, Chicago, IL

*Juris Doctor*, May 2020; GPA: 3.55

- Honors Societies: National Order of Barristers; National Order of Scribes
- Dean's List
- Honors Programs: Moot Court Honors Board: Associate Justice; THE UIC-JOHN MARSHALL LAW REVIEW: Board member, Student Publications Editor; Trial Advocacy Council
- Competitions: John J. Gibbons Moot Court Competition (Best Petitioner's Brief, Spring 2019); Dean Fred. F. Herzog Moot Court Competition (Semifinalist); 1L Moot Court Competition (Finalist); Quinnipiac Trial Advocacy Competition (Semifinalist); San Diego Criminal Law Moot Court Competition (Fall 2019); John J. Gibbons Moot Court Competition (Spring 2020)
- Extracurricular: *Vice President*, Women's Law Caucus; *Coach*, 1L Mock Trial (3<sup>rd</sup> Place), 1L ADR, 1L Moot Court (1<sup>st</sup> Place) Competitions; *Writer*, DECISIVE UTTERANCE
- Teaching Assistant: Legal Skills III, Torts, Legal Skills I, Criminal Law
- Publication: Comment: *A Veiled Threat: The Role of Framing in Sentencing Disparities between Male and Female Terrorists* (THE UIC-JOHN MARSHALL LAW REVIEW Issue 53-1, upcoming)
- Volunteer Work: *Evaluator*, YMCA Moot Court Competition; *Appellate Brief Writer*, Al Otro Lado

**Roosevelt University**, Chicago, IL

*Bachelor of Arts in Criminal Justice with Honors*, May 2017

- Franklin Honors Society, Roosevelt University Honors Program
- Winner of the Roosevelt University Undergraduate Research Symposium
- Managing Editor of *The Purdue Review* (transferred)

### EMPLOYMENT

**Office of the State Appellate Defender**, Springfield, IL | **Assistant Appellate Defender**, October 2020-present

- Wrote persuasive documents related to criminal appeals, including opening briefs, reply briefs, and petitions for leave to appeal
- Researched issues that involved complex legal issues, such as evidentiary, sentencing, and constitutional issues
- Communicated with clients about the status of their cases in the appellate court

**Kalouris Law Firm**, Addison, IL | **Law Clerk**, April 2020-October 2020

- Assisted experienced attorneys in matters related to family law and civil litigation by researching legal issues and shadowing the attorneys during various legal proceedings, including depositions
- Researched topics relating to family law
- Interviewed clients during intake interviews to learn about their cases and conveyed that information to the law firm

**Illinois Attorney General**, Chicago, IL | **Intern—Criminal Appeals Division**, Jan. 2020-April 2020

- Worked with experienced attorneys to write documents related to criminal appeals and habeas proceedings
- Assisted in the preparation of oral arguments

**Office of the State Appellate Defender**, Chicago, IL | **Intern**, Aug. 2019-Dec. 2020; Jan. 2019-May 2019

- Worked with experienced attorneys to write documents related to criminal appeals, including opening briefs, reply briefs, and petitions for leave to appeal
- Researched issues that involved reasonable doubt, transferred intent, ineffective assistance of counsel, and other criminal law topics
- Assisted in the preparation of oral arguments

**Public Defender's Office**, Chicago, IL | **Intern—Juvenile Justice Division**, May 2019-Aug. 2019

- Worked with experienced attorneys to observe trial proceedings and interact with juvenile clients
- Researched issues relating to juvenile justice in preparation for trials and pre-trial motions
- Used my 711 license to interview clients and represent them during arraignments and proceedings

**State's Attorney's Office, Chicago, IL | Sex Crimes Law Clerk, Aug. 2018-Nov. 2018**

- Drafted documents relating to the prosecution of sex crimes, including documents related to the admissibility of evidence and admission of other crimes evidence
- Transcribed and translated jail calls from Polish to English
- Shadowed attorneys during victim-witness interviews and trial proceedings

**Criminal Division, Cook County Circuit Court, Chicago, IL | Judicial Intern, May 2018-Aug. 2018**

- Observed proceedings at various stages of criminal trials, including motions in limine, jury selection, trial proceedings, postconviction hearings, and expungement hearings
- Researched various aspects of Illinois criminal law, including prosecutorial misconduct, ineffective assistance of counsel, admissibility of newly discovered evidence, admissibility of recantations
- Drafted orders disposing of postconviction proceedings and memos about evolving Illinois law

**Law Offices of Lauren Cohen, Esq., Chicago, IL | Law Clerk, March 2018-May 2018**

- Researched case file to identify pertinent information needed for court documents
- Drafted motions, petitions, and other documents related to family law, including petitions for dissolutions of marriage, motions to vacate, petitions to claim child, motions for default, summons requests, subpoenas, and subpoena riders

**FOREIGN LANGUAGE**

**Polish:** Native Speaker (conversationally fluent in reading, writing, speaking)

**INTERESTS**

- My Pomeranian puppy named Spooky, who I adopted shortly before Halloween in 2020
- Photography, particularly nature photography
- Reading fantasy novels

## Juris Doctor

Page: 1 of 1  
Date Printed: June 8, 2020

Academic Program:  
Juris Doctor

Name: Ms. Natalia Galica  
ID #: 0123126

COURSE	Course Title			CRD	GRD	GRDPT	COURSE	Course Title			CRD	GRD	GRDPT
FALL 2017 (08/21/2017 to 12/15/2017)							FALL 2019 (08/26/2019 to 12/13/2019)						
JD054	LS I - CIVIL RIGHTS			3.00	A	12.00	JD012	MOOT COURT COMPETITION			1.00	P	.....
JD063	CONTRACTS I			3.00	B-	8.01	JD013	MOOT COURT HONORS PRO: EX BRD			1.00	P	.....
JD066	PROPERTY			4.00	A	16.00	JD025	LAW REVIEW: BOARD MEMBER			2.00	P	.....
JD073	TORTS			4.00	B	12.00	JD152	LS IV: DRAFTING-CIVIL LIT			2.00	A+	8.02
JD521E	EXPERT LEARNING			1.00	B+	3.33	JD210	COUNSELING AND NEGOTIATIONS			3.00	A	12.00
	AHRS	EHRS	QHRS	QPTS	GPA		JD213	CRIMINAL PROCED ADJUDICATION			2.00	B	6.00
Term	15.00	15.00	15.00	51.34	3.423		JD247	SECURED TRANSACTIONS			2.00	B+	6.66
Cumulative	15.00	15.00	15.00	51.34	3.423			AHRS	EHRS	QHRS	QPTS	GPA	
Dean's List							Term	13.00	13.00	9.00	32.68	3.631	
							Cumulative	81.00	78.00	67.00	237.78	3.549	
SPRING 2018 (01/22/2018 to 05/18/2018)							SPRING 2020 (01/13/2020 to 05/08/2020)						
JD056	LS II			3.00	B+	9.99	JD012	MOOT COURT COMPETITION			1.00	P	.....
JD060	CRIMINAL LAW			3.00	A-	11.01	JD021	LAW REVIEW: STAFF EDITOR			1.00	P	.....
JD064	CONTRACTS II			3.00	A-	11.01	JD025	LAW REVIEW: BOARD MEMBER			2.00	P	.....
JD070	CIVIL PROCEDURE I			3.00	A	12.00	JD150	LEG FUND REV TEST TAKING SKILL			3.00	B	9.00
JD172	CONSTITUTIONAL LAW I			3.00	B	9.00	JD287	CRITICAL RACE FEMINISM			3.00	A	12.00
	AHRS	EHRS	QHRS	QPTS	GPA		JD520	BAR ESSAY WRITING			2.00	A	8.00
Term	15.00	15.00	15.00	53.01	3.534			AHRS	EHRS	QHRS	QPTS	GPA	
Cumulative	30.00	30.00	30.00	104.35	3.478		Term	12.00	12.00	8.00	29.00	3.625	
Dean's List							Cumulative	93.00	90.00	75.00	266.78	3.557	
SUMMER 2018 (06/04/2018 to 08/03/2018)							Dean's List						
JD159AA	LS III: APPELLATE ADVOCACY			2.00	A+	8.02	-----						
JD176	PROFESSIONAL RESPONSIBILITY			3.00	A-	11.01	Degree Received: Juris Doctor						
JD297	EXTERN: JUDICIAL			2.00	P	.....	Date Conferred: 05/10/2020						
	AHRS	EHRS	QHRS	QPTS	GPA		Rank: 50/196						
Term	7.00	7.00	5.00	19.03	3.806		-----						
Cumulative	37.00	37.00	35.00	123.38	3.525		End of official record.						
FALL 2018 (08/20/2018 to 12/14/2018)													
JD001	TRIAL/ADR TEAM COMPETITION			2.00	P	.....							
JD170	CIVIL PROCEDURE II			3.00	A-	11.01							
JD173	CONSTITUTIONAL LAW II			3.00	B+	9.99							
JD184E	TRIAL LAWYER: EVIDENCE			4.00	B-	10.68							
JD184T	TRIAL LAWYER: ADVOCACY			3.00	A	12.00							
	AHRS	EHRS	QHRS	QPTS	GPA								
Term	15.00	15.00	13.00	43.68	3.360								
Cumulative	52.00	52.00	48.00	167.06	3.480								
SPRING 2019 (01/22/2019 to 05/17/2019)													
JD027	LAW REVIEW: COMMENT			2.00	P	.....							
JD119	ARBITRATION			2.00	A	8.00							
JD212	CRIMINAL PROCEDURE: POLICE INV			3.00	A-	11.01							
JD226	LS IV: DRAFTING-CRIMINAL			2.00	A+	8.02							
JD275	EMPLOYMENT DISCRIMINATION			3.00	A-	11.01							
JD278	EXTERN: CRIMINAL			1.00	P	.....							
JD920	DEPAUL: ASYLUM & REFUGEE LAW			0.00	W	.....							
	AHRS	EHRS	QHRS	QPTS	GPA								
Term	16.00	13.00	10.00	38.04	3.804								
Cumulative	68.00	65.00	58.00	205.10	3.536								
Dean's List													

Continued on next Column/Page

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This writing sample is a portion of the brief that I wrote for the John J. Gibbons Criminal Procedure Moot Court Competition in Spring 2019. The brief won the award for Best Petitioner Brief out of 43 teams. The issue is whether the separate sovereigns exception to the double jeopardy clause should be overruled.

# **I. THE SEPARATE SOVEREIGNS EXCEPTION TO THE DOUBLE JEOPARDY CLAUSE SHOULD BE OVERRULED BECAUSE ITS VITALITY AND PRACTICALITY HAS BEEN ERODED**

The separate sovereigns exception should be overruled and Dixon's successive conviction in federal court should be reversed. "[T]he Double Jeopardy Clause of the Fifth Amendment prohibits more than one prosecution for the 'same offence.'" *Puerto Rico v. Sánchez Valle*, 136 S. Ct. 1863, 1876 (2016). An exception exists, however, when two separate sovereigns prosecute the individual. *United States v. Lanza*, 260 U.S. 377, 382 (1922). In the past, this Court has reasoned that when an individual "in a single act violates the 'peace and dignity' of two sovereigns by breaking the laws of each, he has committed two distinct 'offences.'" *Heath v. Ala.*, 474 U.S. 82, 88 (1985) (citing *Lanza*, 260 U.S. at 382). In the present case, the exception was used to justify charging Dixon under both state and federal statutes for unlawful possession of a weapon. R. 4-5. As a result of the subsequent federal prosecution, Dixon's sentence effectively tripled. R.5.

When determining whether to overrule a previous decision, this Court has previously, stated, "*stare decisis* cannot possibly be controlling when... the decision in question has been proved manifestly erroneous, and its underpinnings eroded, by subsequent decisions of this Court." *United States v. Gaudin*, 515 U.S. 506, 521 (1995). This Court has also reasoned when the facts surrounding the decision have changed such that the original decision is "robbed... of significant application or justification" the old decision will be overruled. *Planned Parenthood v. Casey*, 505 U.S. 833, 855 (1992). This reasoning is particularly true where the concept is a "doctrinal dinosaur" that has "eroded over time." *Kimble v. Marvel Entm't, L.L.C.*, 135 S. Ct. 2401, 2410-11 (2015).

The separate sovereigns exception has been eroded over time by both the decisions of this court and the facts surrounding its application, and should be overruled. First, the concept of dual-sovereignty has been robbed of legal justification due to the incorporation of the Fifth Amendment



to the states and an evaluation of the Framers's intent. Second, dual-sovereignty is no longer practical due to the increasing cooperation between federal and governments. Finally, Dixon's successive conviction violates notions of fundamental fairness because the convictions contain the same elements. Therefore, Dixon's successive federal conviction should be overturned in order to preserve his Fifth Amendment right and to avoid violating the Double Jeopardy Clause.

**A. The Separate Sovereigns Exception Has Been Robbed of Legal Justification Due to Evolving Caselaw and Historical Context**

The separate sovereigns exception does not reflect the principles of fundamental fairness of the Constitution. The exception has not been reviewed since the Fifth Amendment was incorporated to the states and is incohesive with the intent of the framers. In short, it has been robbed of its justification. Therefore, this Court should overrule the exception.

The Double Jeopardy Clause prevents individuals from being prosecuted twice for the same crime. *Abbate v. United States*, 359 U.S. 187, 198 (1959). "A defendant is placed in jeopardy in a criminal proceeding once the defendant is put to trial before the trier of facts." *United States v. Jorn*, 400 U.S. 470, 480 (1971). The purpose of the Double Jeopardy clause is to support the concept of finality in a trier of facts' decision. *Id.* at 479. Additionally, the clause is designed so that "an accused shall not have to marshal the resources and energies necessary for his defense more than once for the alleged same acts." *Abbate*, 359 U.S. at 198. The separate sovereigns exception, on the other hand, allows for an individual to be prosecuted in the state and federal courts, even when the prosecution arises from the same facts. *Bartkus v. Illinois*, 359 U.S. 121, 129 (1959). This is due to the reasoning that "[e]very citizen of the United States is also a citizen of a State or territory. He may be said to owe allegiance to two sovereigns, and may be liable to punishment for an infraction of the laws of either." *Moore v. Ill.*, 55 U.S. (14 How.) 13, 20 (1852).

**1. The recent incorporation of the Fifth Amendment's Double Jeopardy Clause to the states signifies that the legal underpinnings of the exception have substantially changed in a way that indicates that the exception should be overruled**

The legal underpinnings of the separate sovereigns exception have substantially changed, which warrants a reversal of the exception. *See Gaudin*, 515 U.S. at 521. This Court may revisit its holdings to ensure that the rulings are not “doctrinal dinosaur[s]” that have “eroded over time.” *Kimble*, 135 S. Ct. at 2410-11. The last time this Court considered the constitutionality of the separate sovereigns exception was in 1959. *Abbate*, 359 U.S. at 194. This Court specifically noted that “[t]he Fifth Amendment... applies only to proceedings by the Federal Government.” *Id.* It was not until a decade later that this Court incorporated the Fifth Amendment prohibition against Double Jeopardy to the states via the Fourteenth Amendment. *Benton v. Maryland*, 395 U.S. 784, 798 (1969). After this Court’s incorporation of the Fifth Amendment, state courts were held to the same double jeopardy standards as the federal courts. *Id.* at 796. In other words, states—like the federal government—may no longer pursue successive prosecutions against the same defendant for the same crime. *Id.* As Justice Brennan noted, “this Court has barred both governments from combining to do together what each could not constitutionally do on its own” on a number of occasions. *Heath*, 474 U.S. at 103 (Brennan, J., dissenting).

In *Elkins v. United States*, 364 U.S. 206 (1960), this Court overruled the “silver platter” doctrine. *Id.* at 208. The doctrine allowed federal prosecutors to admit evidence that was “unlawfully seized by state officers.” *Id.* at 210. In its decision, this Court began by reviewing the constitution basis for the rule as applied to federal officers—the Fourth Amendment’s rule prohibiting unreasonable searches and seizures. *Id.* at 209 (citing *Weeks v. United States*, 232 U.S. 383 (1914)). The Court pointed out that the same standard did not apply to local police officers following this Court’s holding in *Weeks* and because of that, federal prosecutors were able to use evidence that was unreasonably seized by state officers. *Id.* at 211. This Court recognized that the Fourth Amendment was incorporated against the states 35 years after the *Weeks* decision, and as a result, the legal foundation of the “silver platter” doctrine was undermined. *Id.* at 213-14 (citing

*Wolf v. Colorado*, 338 U.S. 25 (1949)). This Court stated, “to the victim it matters not whether his constitution right has been invaded by a federal agent or by a state officer.” *Id.* at 215. Ultimately, this Court held that because incorporation imposed the same standards upon the state and federal officers and prosecutors, the “silver platter” doctrine was illogical and contrary to principles of fundamental fairness. *Id.* at 214, 223.

Analogous to the “silver platter” doctrine in *Elkins*, incorporation of the Fifth Amendment to the states fundamentally altered the legal underpinnings of the separate sovereigns doctrine. Since incorporation, states have been held to the same Double Jeopardy standards as the federal government. *Benton*, 395 U.S. at 796. As this Court observed in *Elkins*, to the victim it matters not whether a successive trial is executed by a federal or state court; rather, what matters is that he must expend resources to defend himself for the same crime in both prosecutions. Through the separate sovereigns exception, the governments are circumventing the Constitution and combining their powers to do what neither can do alone.

## **2. The separate sovereigns exception is incohesive with the intent of the framers**

An evaluation of the foundations of the Double Jeopardy Clause indicates that the separate sovereigns exception is incohesive with the framer’s intent. Throughout this Court’s history, the intent of the framers has been given particular deference. *U.S. Term Limits v. Thornton*, 514 U.S. 779, 808 (1995); *Powell v. McCormack*, 395 U.S. 486, 532-48 (1969). Even as recently as 2008, the intent of the framers was a deciding factor when deciding the proper interpretation and limitations of a Constitution Amendment. *District of Columbia v. Heller*, 554 U.S. 570, 599 (2008). The framers indicated that the state and federal systems are two “parts of ONE WHOLE.” *The Federalist No. 82* (Alexander Hamilton) (emphasis in original). This suggests that the framers intended for the judicial systems to act concurrently, rather than separately.

The Double Jeopardy Clause comes from the common law notion of *auterfoits acquit*, or the concept that “no man is to be brought into jeopardy of his life, more than once, for the same offence.” *Green v. United States*, 355 U.S. 184, 200 (1957); *Grady v. Corbin*, 495 U.S. 508, 530 (1990) (Scalia, J., dissenting). In England, *autrefoits acquit* “prohibited the reprosecution of a defendant acquitted or convicted of the same offense in a court of competent jurisdiction—even if the prosecution occurred in a foreign country.” Edwin Meese III, *Big Brother on the Beat: The Expanding Federalization of Crime*, 1 Tex. Rev. L. & Pol. 1, 18 (1997) [hereinafter, Meese, *Big Brother*]. For instance, an individual prosecuted for a murder of a man in Portugal could not be retried in England for the same offense. Akhil R. Amar & Jonathan L. Marcus, *Double Jeopardy Law After Rodney King*, 95 Colum. L. Rev. 1, 43 (1995); Meese, *Big Brother*, at 18. Notably, by 1959, most free countries had accepted the notion that “a prior conviction elsewhere [acts] as a bar to a second trial in their jurisdiction.” *Abbate*, 359 U.S. at 203 (Black, J., dissenting). It is illogical to suggest that “our States are more distinct from the Federal Government than are foreign nations from each other.” *Id.* Furthermore, during the drafting of the Fifth Amendment, the framers were confronted with a proposal to the Double Jeopardy Clause that “would have barred double prosecutions for ‘the same offense’ only if brought under ‘any law of the United States.’” *Id.* (quoting, 1 Annals of Cong., 753 (1789)). The fact that the framers rejected this proposal indicates that they intended to bar *all* successive prosecutions—regardless of whether the original prosecution occurred in a state or federal court.

Also underlying the Double Jeopardy clause is the protection of individual liberties, specifically “respect for individual dignity and privacy, prevention of governmental overreaching, preservation of an accusatorial system of criminal justice.” *United States v. Balsys*, 524 U.S. 666, 717 (1998) (Breyer, J., dissenting). The Fifth Amendment itself focuses on the effects of successive prosecutions on the “person,” not on the actions of the government. U.S. Const. amend.

V. This demonstrates that the framers intended to protect “the person” regardless of the prosecuting authority. This is compounded by the writings of the framers, which indicate that the goal was to create “a double security” for the rights of individuals. *The Federalist No. 51* (James Madison); *Bond v. United States*, 564 U.S. 211, 221-22 (2011) (emphasizing, “Federalism secures the freedom of the individual”). Therefore, the ultimate goal of the separation was to ensure that “that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority.” *The Federalist 51* (James Madison). Thus, the intention of the framers was that “freedom was enhanced by the creation of two governments,” not undermined by the combined efforts of both. *United States v. Lopez*, 514 U.S. 549, 576 (1995) (Kennedy, J., concurring).

The separate sovereigns exception undercuts the intent of the framers. As Justice Black stated, “the Bill of Rights' safeguard against double jeopardy was intended to establish a broad national policy against federal courts trying or punishing a man a second time after acquittal or conviction in any court.” *Abbate*, 359 U.S. at 203 (Black, J., dissenting). He went on to say,

[i]t is just as much an affront to human dignity and just as dangerous to human freedom for a man to be punished twice for the same offense, once by a State and once by the United States, as it would be for one of these two Governments to throw him in prison twice for the offense.

*Id.* Indeed, there is “nothing in the history of our Union, in the writings of its Founders, or elsewhere, to indicate that individual rights deemed essential by both State and Nation were to be lost through the combined operations of the two governments.” *Bartkus*, 359 U.S. at 155-56 (Black, J., dissenting). By allowing the two governments to combine resources and successively prosecute individuals, as Dixon was here, the separate-sovereigns exception erodes the very principles this nation was founded on acts as a mechanism to circumvent the Constitution. The contradictions between the framers’ intent and the exception demonstrate that it has been robbed of justification and should be overruled. *Casey*, 505 U.S. at 855.

**B. The Application of the Exception is No Longer Practical or Justifiable Due to the Increasing Cooperation Between the Governments and Increasing Number of Federal Crimes**

The context in which the separate sovereigns exception emerged no longer applies due to the changing relationship between the state and federal governments. This Court first mentioned the exception prior to the Civil War. *Bartkus*, 359 U.S. at 129 (explaining that the exception stemmed from the case *Fox v. Ohio*, 46 U.S. (5 How.) 410 (1847)). This is noteworthy because the Civil War changed the relationship between the federal and state governments. Daniel A. Braun, *Praying to False Sovereigns: The Rule Permitting Successive Prosecutions in the Age of Cooperative Federalism*, 20 Am. J. Crim. L. 1, 33 (1992). “The states of the Confederacy fought a war for independence, and they lost. As a result, they had to give up certain claims to independence, sovereignty, and the allegiance of their citizens.” *Id.* Afterwards, the dynamic between the state and federal governments began to shift, giving the national government room to expand and “encompass many of the responsibilities formerly viewed as securely within the province of the states.” *Id.* The expansion of the federal government has led to a notable increase in cooperation between federal and state law enforcement. *Id.* In fact, this Court has commented on this growing cooperation on a number of occasions. *Mapp v. Ohio*, 367 U.S. 643, 658 (1961) (recognizing, “[f]ederal-state cooperation in the solution of crime”); *Elkins*, 364 U.S. at 221.

While the cooperation should be commended, it is not without limitation. The growing cooperation may be cause for concern in situations where, as Justice Kennedy cautioned, “the Federal Government [] take[s] over the regulation of entire areas of traditional state concern.” *Lopez*, 514 U.S. at 576 (Kennedy, J., concurring). Justice Kennedy’s principle concern was that “the boundaries between the spheres of federal and state authority would blur and political responsibility would become illusory.” *Id.* This Court recently echoed Justice Kennedy’s concern when it remarked that federal intrusion into state criminal law enforcement “would fundamentally

upset the Constitution's balance between national and local power." *Bond v. United States*, 572 U.S. 844, 866 (2014)

Since the Civil War, the increased federalization of crimes has blurred the boundaries between state and federal authority over police powers. Crime control has been "traditionally reserved to the states, and "federal preemption of areas of crime control... has been relatively unknown" in our nation's history. *Murphy v. Waterfront Comm'n of New York*, 378 U.S. 52, 96 (1964) (White, J., concurring). This Court originally theorized that the overlap between state and federal statutes would only occur "in instances of peculiar enormity." *Fox*, 46 U.S. at 435. Now, however, there are certain areas of criminal law where "federal law overlaps almost completely with state law." Sara S. Beale, *The Many Faces of Overcriminalization: Essays: From Morals and Mattress Tags to Overfederalization*, 54 Am. U.L. Rev. 747, 754 (2005) [hereinafter, Beale, *The Many Faces of Overcriminalization*]. As such, "[d]ual federal-state criminal jurisdiction is now the rule rather than the exception." *Id.* (listing "theft, fraud, extortion, bribery, assault, domestic violence, robbery, murder, weapons offenses, and drug offenses" as areas where federal and state criminal laws overlap).

The "First Congress initially established only seventeen federal crimes." Thomas White, *Limitations Imposed on the Dual Sovereignty Doctrine by Federal and State Governments*, 38 N. Ky. L. Rev. 173, 190 (2011) [hereinafter, White, *Limitations Imposed on the Dual Sovereignty Doctrine*]. After the Civil War, the federal government began to rapidly expand the number of federal criminal statutes. Now, instead of the original 17 crimes, there are over 4,000 federal crimes. Beale, *The Many Faces of Overcriminalization* at 753. A significant portion of those were enacted between 1970 and 1998. *Id.* As Justice Thomas recognized in 1992, there has been "a stunning expansion of federal criminal jurisdiction into a field traditionally policed by state and local laws." *Evans v. United States*, 504 U.S. 255, 291 (1992) (Thomas, J., dissenting). This past

year, this Court recognized that “the growing number of criminal offenses in our statute books may be cause for concern.” *Currier v. Virginia*, 138 S. Ct. 2144, 2156 (2018). The increase in federal-state overlap is an indication that the separate-sovereigns doctrine needs to be re-examined because dual jurisdiction no longer exists in rare instances of “peculiar enormity.” *Fox*, 46 U.S. at 435. Rather, the overlap is becoming the norm. Unfortunately, the increase in overlap allows for unjust outcomes, such as the opportunity for dress rehearsals, cumulative punishments, and greater sentences than were contemplated by the legislature.

The Double Jeopardy Clause does not allow for “the state with all its resources and power... to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity.” *Green*, 355 U.S. at 187-88. This is because Double Jeopardy requires that “an accused shall not have to marshal the resources and energies necessary for his defense more than once for the same alleged criminal acts.” *Abbate*, 395 U.S. at 198.

This Court has repeatedly expressed concern that “[m]ultiple prosecutions [] give the state an opportunity to rehearse its presentation of proof, thus increasing the risk of an erroneous conviction for one or more of the offenses charged.” *Grady*, 495 U.S. at 518 (overruled on other grounds by *United States v. Dixon*, 509 U.S. 688 (1993)); see *Green*, 355 U.S. at 187-8 (observing that successive prosecutions “enhanc[e] the possibility that even though innocent [the defendant] may be found guilty”). Successive prosecutions would allow the prosecutors to treat the “first trial as no more than a dry run for the second prosecution.” *Ashe v. Svenson*, 397 U.S. 436, 446 (1970).

A striking example of this is the case of Robert Angleton, who was “acquitted of capital murder in state court.” David B. Owsley, *Accepting the Dual Sovereignty Exception to Double Jeopardy: A Hard Case Study*, 81 Wash. U. L.Q. 765, 768 (2003) [hereinafter, Owsley, *Accepting the Dual Sovereignty Exception*]. Afterwards, state prosecutors worked alongside federal law



enforcement officials to prosecute Angleton under federal law. *Id.* at 769. Shockingly, “the FBI interviewed members of the jury that acquitted Angleton, questioning them as to what evidence and aspects of Texas's case led them to return the not-guilty verdict.” *Id.* Before trial, the federal prosecutors admitted they would use “much of the same evidence utilized in the state prosecution.” White, *Limitations Imposed on the Dual Sovereignty Doctrine*, at 185. The trial court “acknowledged that the state and federal crimes were identical for purposes of determining double jeopardy under... the test for determining whether offenses are the same... when prosecuted by a single sovereign.” *Id.* Yet, like the court in the present case, it could not dismiss the charges due to the separate sovereign exception. In effect, the state prosecution was then a dress rehearsal for the successive federal prosecution, because the federal prosecutors were able to learn from the mistakes made by the state prosecutors. Owsley, *Accepting the Dual Sovereignty Exception*, at 770. This case and others like it, undermines the Double Jeopardy clause, which supports the concept of finality in a trier of facts’ decision. *Jorn*, 400 U.S. at 479.

Moreover, the risk of cumulative punishments increases with successive federal and state prosecutions. Adam J. Adler, *Dual Sovereignty, Due Process, and Duplicative Punishment: A New Solution to an Old Problem*, 124 Yale L.J. 448, 456 (2014). There is no shortage of examples of defendants being punished in both state and federal proceedings. *Abbate*, 359 U.S. 187; *Lanza*, 260 U.S. 377; *United States v. Ng*, 699 F.2d 63 (2d Cir. 1983). In one particularly troubling case, a defendant was sentenced to 20 years imprisonment in federal court and then later to 22-24 years imprisonment in state court. *United States v. Grimes*, 641 F.2d 96, 97 (3d Cir. 1981). There, the Third Circuit mandated that the defendant serve these sentences consecutively rather than concurrently. *Id.* This holding effectively doubled the defendant’s punishment. *Id.*

Finally, the combination of federal and state punishments results in a far greater punishment than originally contemplated by either legislature. *Houston v. Moore*, 18 U.S. (5

Wheat.) 1, 23 (1820). This Court has recognized, “[i]f the one [legislature] imposes a certain punishment for a certain offence, the presumption is, that this was deemed sufficient, and... the only proper one. If the other legislature impose[s] a different punishment... I am at a loss to conceive how they can both consist harmoniously together.” *Houston*, 18 U.S. (5 Wheat.) at 23. Similarly, the separate-sovereign exception was used to justify imposing a greater sentence for Dixon under both the state and federal statutes. R. 4-5. In state court, Dixon pleaded guilty to a state firearm charge where “all but 12 months of his sentence were suspended.” R. 4. In the subsequent federal court conviction, Dixon “entered a conditional guilty plea” and “the court sentenced [him] to 46 months imprisonment.” R. 5. In effect, Dixon “is set to be released from jail on the firearm charge nearly three years after he would have been released from custody on the state firearm charge alone.” R. 5. This undermines the aforementioned intention of the framers to enhance freedom of individuals through the separation of powers. *The Federalist* 51 (James Madison). Simply put, the increase in federal-state cooperation combines with the separate sovereigns exception to erode principles of fundamental fairness and justice.

While the federal government has already imposed administrative safeguards to eliminate successive prosecutions and cumulative punishment through the Petite Policy, which states “a federal trial following a state prosecution for the same act or acts is barred unless the reasons are compelling,” the policy is ineffective. *Rinaldi v. United States*, 434 U.S. 22, 24 (1977). According to the Department of Justice, the Petite Policy “precludes the initiation or continuation of a federal prosecution, following a prior state or federal prosecution based on substantially the same act(s) or transaction(s) unless... the prior prosecution... left [a federal] interest demonstrably unvindicated.” U.S. Dep’t of Justice, *Justice Manual* § 9-2.031 (2015), <https://www.justice.gov/jm/jm-9-2000-authority-us-attorney-criminal-division-mattersprior-approvals#9-2.031>.

Through this portion of the manual, the Department of Justice acknowledges that the goal of successive prosecutions is to impose additional punishments when the federal interest is left “unvindicated,” without any limitation. *Id.* The absence of limitations in turn leads to cumulative punishments and greater sentences than the legislatures contemplated. Even where the prosecutions could be barred under the policy, the manual indicates that the policy is not legally enforceable, “nor does it place any limitations on otherwise lawful litigative prerogatives of the Department of Justice.” *Id.* In practice, the policy does little to curtail cases implicating the separate sovereigns exception. *See e.g., Roach v. Missouri*, 571 U.S. 823 (2013); *Donchak v. United States*, 568 U.S. 889 (2012); *Mardis v. United States*, 562 U.S. 943 (2010). Rather, “a defendant’s argument that a prosecution violated the Petite Policy or any other DOJ policy falls on deaf ears.” White, *Limitations Imposed on the Dual Sovereignty Doctrine*, at 204. Thus, the policy is ineffective at preventing unjust outcomes.

The increasing federal-state cooperation and federalization of crimes indicates this Court must revisit the separate sovereigns exception. The prevalence of “dress rehearsals,” cumulative punishments, and greater sentences than were contemplated by the legislature signifies that the facts surrounding the application of the exception have changed substantially. In light of these changing facts, the exception must be overruled. *See Casey*, 505 U.S. at 855.

### **C. Dixon’s Successive Federal Conviction Violates the *Blockburger* Test and Should Therefore Be Reversed**

After finding that the Separate Sovereigns exception should be overruled, this Court must still analyze whether Dixon’s conviction violates the Double Jeopardy Clause. This Court reviews Double Jeopardy violations under the *Blockburger* test. *Blockburger v. United States*, 284 U.S. 299 (1932). Particularly, “the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.” *Id.* at 304. If one offense does require proof of an additional element, the two offenses do not violate the

Double Jeopardy Clause. *Id.* The *Blockburger* test notably extends to situations where the statutes are not exactly identical. *Brown v. Ohio*, 432 U.S. 161, 169 (1977).

For instance, in *Brown*, the defendant was charged in two separate prosecutions for joyriding and theft of a vehicle. *Id.* at 162. Although the statutory elements were not precisely the same, this Court noted, “[i]t has long been understood that separate statutory crimes need not be identical -- either in constituent elements or in actual proof - in order to be the same within the meaning of the constitution prohibition.” *Id.* at 164. Instead, the inquiry hinges on whether the purpose of the multiple prosecutions is to obtain cumulative punishments for the same offense. *Id.* at 166. Thus, although the statutes were not identical, this Court still found a violation under the *Blockburger* test. *Id.* at 169.

In the present case, Dixon was first charged in state court under *Setonia Criminal Code* § 13A-11-72(a). R. 4. The statute provides, “No person who has been convicted in this state or elsewhere of committing a crime of violence shall own a firearm or have one in his or her possession or under his or her control.” R. 4. Subsequently, Dixon was charged in federal court under 18 U.S.C. § 922(g)(1) (2012), which prohibits “a felon from possessing a firearm.” R. 5.

These two statutes require the same elements to be proven. Specifically, the statutes both require a showing that the person being convicted: (1) has formerly been convicted of a crime and (2) was in possession of a firearm during the events leading to the present prosecution. R.5; 18 U.S.C. § 922(g)(1) (2012). Although the statutes are not exactly identical, like the statutes in *Brown*, the two statutes seek to punish the same behavior. Moreover, the District Court itself made an implicit finding that the two provisions are identical. R. 5. Specifically, Judge Maggie Bloom “acknowledged that Dixon had been subject to duplicative prosecutions.” R. 5. In denying Dixon’s motion, Judge Bloom indicated that “Unless and until the Supreme Court overturns that exception, Dixon’s Double Jeopardy claim must fail.” R. 5. In analyzing Judge Bloom’s reasoning, it is

apparent that but-for the separate sovereigns exception, the prosecutions would violate the Double Jeopardy Clause and, by extension, the *Blockburger* test. R. 5. Therefore, because the *Blockburger* test has been violated, the second prosecution should be barred, and Dixon's subsequent federal conviction should be reversed.

## Applicant Details

First Name **Samantha**  
 Middle Initial **R**  
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## Applicant Education

BA/BS From **University of North Carolina-Chapel Hill**  
 Date of BA/BS **May 2018**  
 JD/LLB From **University of Richmond School of Law**  
[http://www.nalplawsonline.org/content/OrganizationalSnapshots/OrgSnapshot\\_235.pdf](http://www.nalplawsonline.org/content/OrganizationalSnapshots/OrgSnapshot_235.pdf)  
 Date of JD/LLB **May 8, 2020**  
 Class Rank **50%**  
 Law Review/Journal **Yes**  
 Journal(s) **Public Interest Law Review**  
 Moot Court Experience **Yes**  
 Moot Court Name(s) **University of Richmond Moot Court Board**

## Bar Admission

## Prior Judicial Experience

Judicial  
Internships/      **No**  
Externships  
Post-graduate  
Judicial Law      **Yes**  
Clerk

## Specialized Work Experience

## Recommenders

Davis, Rita  
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**This applicant has certified that all data entered in this profile and  
any application documents are true and correct.**

3203 W. Franklin St. Apt. B  
Richmond, Virginia 23221

April 21, 2021

Hon. Elizabeth Hanes  
701 East Broad Street  
Richmond, VA 23219

Dear Judge Hanes:

As a third-year law student at the University of Richmond School of Law who hopes to pursue a career in public interest law, I am writing to apply to be your law clerk for the 2022-2024 term.

Upon graduation, I will be clerking for Judge Hairston and Judge Cheek in the Richmond Circuit Court for the 2021-2022 term. I want to clerk for you because you preside over a substantial number of prisoner and civil rights cases in a fast-paced environment where I will continuously have the opportunity to learn new facets of criminal and civil law. Given your unique perspective as a former federal public defender, clerking for you would undoubtedly lend me valuable experience as I embark upon my legal career.

Throughout law school, I have developed a passion for advocacy on behalf of marginalized communities and have sought out experiences whose research and writing projects have prepared me for a career in public interest law. While working for the Counsel to the Governor of Virginia, I wrote the Robert E. Lee Monument removal report to the Governor. I assisted in drafting Executive Order 32, which established the Commission to Examine Racial Inequity in Virginia's Laws, and made recommendations to the Counsel regarding pardon petitions. Additionally, while I was externing with the Virginia Office of the Solicitor General, Virginia became the 38<sup>th</sup> state to ratify the Equal Rights Amendment. To ensure that the ERA be recognized as the 28<sup>th</sup> Amendment to the U.S. Constitution, I researched case law and historical documentation to support Virginia's complaint in this litigation. I look forward to transferring these analytical and writing skills to meet the needs of your chambers.

I would appreciate the opportunity of an interview with you. Please find enclosed my application materials. I am happy to provide any additional information that you may need and thank you for your consideration. I look forward to hearing from you.

Sincerely,



Samantha R. Galina



## SAMANTHA R. GALINA

3203 W. Franklin St. Apt. B | Richmond, VA 23221 | sam.galina@richmond.edu | 631.672.8494

### EDUCATION

#### University of Richmond School of Law

Richmond, VA

*Candidate for Juris Doctor*

May 2021

GPA: 3.48

Honors: 2019 Hill-Tucker Bar Association Fellow; Public Policy and Research Drafting, CALI award, "Impacts of the Equal Rights Amendment" Marshall Inn of Court panelist

Activities: Public Interest Law Association, President; *Public Interest Law Review*, General Assembly Editor; Moot Court Board, Intra-Scholastic Oral Argument Chair; American Constitution Society Chapter, Vice President; Sexuality and Gender Alliance, Co-founder; Honor Court, Grievance Committee member; Governor's Commission to Examine Racial Inequity law student assistant

#### University of Cambridge Emmanuel College

Cambridge, UK

*Legal Study Abroad*

Summer 2019

#### University of North Carolina

Chapel Hill, NC

*B.A. Art History, B.A. Public Policy (concentration in social & economic justice)*

May 2018

Honors: UNC/All Atlantic Coast Conference Scholar Athlete

Activities: Roosevelt Institute Summer Fellow; Women's Fencing Team Captain

### EXPERIENCE

#### Richmond Circuit Court

Richmond, VA

*Clerk to the Hon. Cheek, Presiding Judge & Hon. Hairston, Presiding Judge*

August 2021- August 2022

#### Virginia State Senator Ghazala Hashmi

Richmond, VA

*Legal Extern*

January 2021- April 2021

Reviewed 2021 legislation for the Senator and drafting a report pertaining to 2022 legislation

#### Office of the Legal Counsel to the Governor of Virginia, Ralph S. Northam

Richmond, VA

*Special Assistant to the Governor's Counsel*

August 2020- December 2020

Assisted with Lee Monument litigation, pardon petitions, and answered Freedom of Information Act requests

#### U.S. Department of Housing and Urban Development, Office of Fair Housing

Washington, DC

*Legal Extern*

Summer 2020

Produced a memo regarding the standard for damages in intentional discrimination cases under civil rights laws

#### Virginia Office of the Attorney General, Solicitor General

Richmond, VA

*Legal Extern*

January 2020 – May 2020

Researched and drafted memos for Solicitor General, namely pertaining to the Equal Rights Amendment

#### University of Richmond Law School Adjunct Professor Trevor Cox

Richmond, VA

*Research Assistant*

September 2019 – March 2020

Assisted with scholarship for upcoming publication celebrating 50 years of Virginia's Constitution

#### Office of the Legal Counsel to the Governor of Virginia, Ralph S. Northam

Richmond, VA

*Legal Counsel Intern*

Summer 2019

Assisted draft Executive Order 32, the Commission to Examine Racial Inequity in Virginia's Law, briefed the Counsel regarding a tribal land transfer, pardon petitions, and proposed regulation changes

### PUBLICATIONS

*No Rest for the Weary: A Survey of Virginia's 2020 General Assembly Regular and Special Sessions*, 24 RICH. PUB. INT. L. REV. (Spring 2021).

*Low-Income Single Mothers and Their Children: A Co-Housing/Co-Operative Hybrid Solution*, 8 Roosevelt Institute's 10 Ideas Journal for Equal Justice 12 (2016).

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April 27, 2021

The Honorable Elizabeth Hanes

Spottswood W. Robinson III and Robert R. Merhige, Jr., Federal Courthouse

701 East Broad Street

Richmond, VA 23219

Dear Judge Hanes:

I write to recommend Ms. Samantha Galina for the position of law clerk in your chambers.

I met Ms. Galina during the summer of 2019, when she interned for me in the Office of Counsel to the Governor. Ms. Galina joined an office of three -- Counsel, Deputy Counsel, and the Special Assistant to Counsel. Ms. Galina quickly became an integral member of our team. As a summer intern, Ms. Galina conducted legal research, assisted with requests for records under Virginia's Freedom of Information Act, reviewed requests for clemency, and attended all Counsel Office meetings. A large portion of her time was devoted to "Project Traveller." Project Traveller was Counsel's Office's months-long effort to remove the Robert E. Lee Monument in Richmond, Virginia. In furtherance of that project, Ms. Galina researched legal theories, conducted factual research on the statue, General Lee, and the Lost Cause. She researched efforts to remove Confederate monuments in other jurisdictions, identified potential contractors to remove the statue, and estimated removal costs. Ms. Galina also developed a detailed proposal that documented her work and Counsel's recommendation to the Governor regarding the statue. In fact, the Governor's Communications team's media strategy relied heavily on Ms. Galina's proposal in rolling out the Governor's decision to remove the statue.

So highly regarded is Ms. Galina that when the Deputy Counsel took a three-month leave of absence this fall, the Governor hired Ms. Galina to work in Counsel's Office part-time. Again, Ms. Galina proved invaluable as she handled requests for information pursuant to Virginia's Freedom of Information Act. She responded to requests, worked with custodians (often members of cabinet or their deputies) to identify, collect, review, process, and produce responsive records in a timely fashion. Several of the productions were rather large and complex; yet, Ms. Galina completed them with little supervision.

That Ms. Galina is smart is evident from her law school transcript. That she is capable is apparent from my report above. What may not be either is that Ms. Galina is much more. She is personable--a pleasure with which to work. She is professional and exhibits good judgment. She is a creative and independent thinker. We have had many spirited discussions regarding policy issues or petitions for clemency. Indeed, two of her more laudable qualities (neither often found alone much less together) are common sense and pragmatism. I trust her judgment. I value her opinions.

Quite simply, Ms. Galina has an excellent mind and a "good head on her shoulders;" it is my pleasure to commend her to you.

Sincerely,

RITA DAVIS

Chief Counsel to the Honorable Ralph S. Northam, 73rd Governor of the Commonwealth of Virginia.

Rita Davis - [rita.davis@governor.virginia.gov](mailto:rita.davis@governor.virginia.gov)

**SAMANTHA R. GALINA**

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**WRITING SAMPLE**

As a summer legal extern, I prepared this memorandum, entitled *The Standard for Damages in Cases of Intentional Discrimination Under the Civil Rights Statutes* for the Assistant General Counsel for Fair Housing Compliance at the Department of Housing and Urban Development. This memorandum was reproduced with their permission.



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
WASHINGTON, DC 20410-0500

OFFICE OF GENERAL COUNSEL

**MEMORANDUM FOR:** William F. Lynch, Assistant General Counsel for Fair Housing Compliance

**THROUGH:** Meryl J. Kanofsky, Trial Attorney

**FROM:** Samantha Galina, Legal Extern

**SUBJECT:** Standard for Damages in Cases of Intentional Discrimination Under the Civil Rights Statutes

**DATE:** August 7, 2020

## **I. Executive Summary**

This memorandum evaluates the standards federal Courts apply to determine whether a plaintiff is entitled to damages in cases of intentional discrimination arising from violations of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d-1), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12131 – 12134), and Title IX of the Education Amendments Act of 1972 (20 U.S.C. §§ 1681 – 1688), hereinafter collectively the civil rights statutes.<sup>1</sup> The memorandum first traces the history of the deliberate indifference standard and the Supreme Court precedent, which provides the backbone of support for the standard's use in both Title IX and Title VI cases. Next, this memorandum examines the discriminatory animus and deliberate indifference standards for damages in cases arising from intentional discrimination under Section 504 and Title II. While federal Courts are uniform in their application of the deliberate indifference standard for cases arising under Title VI and Title IX, the minority of federal courts apply the discriminatory animus standard for Section 504 and Title II. Finally, the memorandum outlines which circuits follow either standard and the differences between the approaches.

## **II. U.S. Supreme Court Opinions in *Gebser & Davis* coin the Deliberate Indifference Standard for Damages in Intentional Discrimination Cases Brought Under Title IX**

The following case law under Title IX is informative because Title IX uses the same rights, remedies, and procedures as Title VI, Section 504, and Title II.<sup>2</sup> The Supreme Court paved the

<sup>1</sup> Fair Housing and Related Laws, [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/fair\\_housing\\_and\\_related\\_law](https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_and_related_law) (last visited July 16, 2020). The U.S. Department of Housing and Urban Development (HUD) has jurisdiction to enforce the civil rights statutes. See 24 C.F.R. § 1.1; 42 U.S.C. 2000d-1 (Title VI prohibits discrimination on the basis of race, color, and national origin in programs and activities that receive federal financial assistance); 29 U.S.C. 794; 24 CFR 8.1 (Section 504, which was modelled after Title VI, prohibits discrimination based on disability in any program or activity receiving federal financial assistance); 28 C.F.R. § 35.190(b)(4) (Title II prohibits discrimination based on disability in programs, services and activities provided or made available by public entities).

<sup>2</sup> See *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998); *Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629 (1999) (Additionally, Title IX's language is modelled after Title VI's language).

way in *Gebser* and *Davis* for plaintiffs to recover damages in cases of teacher-student and student-student sexual harassment under Title IX. In order to recover damages, the school district official, who had the authority to institute corrective measures on the district's behalf must have had both actual knowledge of the sexual harassment and must have been deliberately indifferent to the teacher's misconduct.<sup>3</sup> In *Gebser*, the teacher engaged in sexual relations with the middle-school aged petitioner, once the teacher was arrested and fired, the petitioner filed a suit raising amongst other claims, a claim for damages against the school district under Title IX.<sup>4</sup>

The Court found that the school district did not act deliberately indifferent because the principal only had actual knowledge that the teacher was making inappropriate comments during class, he was unaware of the sexual relations between the teacher and student.<sup>5</sup> Thus, the principal, who could have instituted corrective measures, could not have satisfied the actual knowledge prong of the analysis.<sup>6</sup>

The Court decided *Davis* just a year after it decided *Gebser*. The Court held that the same deliberate indifference standard for damages applies in cases of Title IX violations arising from student on student harassment.<sup>7</sup> *Davis*, a fifth-grade student, alleged that she had been sexually harassed both physically and verbally for several months by a fellow fifth-grade student and the school district failed to take any disciplinary action after she repeatedly complained to her teachers and principal.<sup>8</sup> The Court stated that the harassment must be "so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit."<sup>9</sup> The Court proclaimed that "[i]f a recipient does not engage in harassment directly, it may not be liable for damages unless its deliberate indifference 'subjects' its students to harassment, *i.e.*, at a minimum, causes students to undergo harassment or makes them liable or vulnerable to it."<sup>10</sup> Additionally, the "harassment must occur 'under' 'the operations of' a recipient" and therefore the harassment must occur in a context in which the school district is in control in order to bring an actionable cause under the statute against the school district.<sup>11</sup>

The Court acknowledged that "[t]he high standard imposed in *Gebser* sought to eliminate any 'risk that the recipient would be liable in damages not for its own official decision but instead for its employees' independent actions.'"<sup>12</sup> Before the case was remanded, the Court found that the complaint alleged sufficient evidence to show the Board had both actual knowledge and acted with deliberate indifference by failing to investigate the incidents or end to the harassment.<sup>13</sup>

<sup>3</sup> *Gebser* at 277.

<sup>4</sup> *Id.* at 278.

<sup>5</sup> *Id.* at 291.

<sup>6</sup> *Id.* at 292.

<sup>7</sup> *Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 633 (1999).

<sup>8</sup> *Id.* at 633-636.

<sup>9</sup> *Id.* at 633.

<sup>10</sup> *Id.* at 632.

<sup>11</sup> *Id.* See 20 U.S.C. § 1681(a); § 1687 (defining "program or activity").

<sup>12</sup> *Davis* at 643 quoting *Gebser* at 290-291.

<sup>13</sup> *Id.* at 654.

### III. The Standard for Damages in Intentional Discrimination Cases Brought under Title VI is Deliberate Indifference

The Supreme Court has yet to address the standard by which a federal funding recipient may be held liable in damages for violating Title VI. However in *Gebser* and again in *Davis* the Court made reference to the fact that “Title IX and Title VI ‘operate in the same manner, conditioning an offer of federal funding on a promise by the recipient not to discriminate, in what amounts essentially to a contract between the Government and the recipient of funds.’”<sup>14</sup> Additionally, the Court noted that Title IX “was modeled after Title VI . . . which is parallel to Title IX except that it prohibits race discrimination, not sex discrimination, and applies in all programs receiving federal funds, not only in education programs.”<sup>15</sup> Thus, it would be consistent for courts to follow the same analysis in Title VI cases as it does in Title IX cases.

Since the Supreme Court’s opinions in *Davis* and *Gebser*, numerous Courts of Appeals faced with cases for damages based on Title VI violations have applied the deliberate indifference standard set out in *Davis*.<sup>16</sup> Whereas, the First Circuit, Second Circuit, Third Circuit, Fifth Circuit, Seventh Circuit, Eighth Circuit, Ninth Circuit, Tenth Circuit, and Eleventh Circuit have adopted the deliberate indifference standard, the Sixth Circuit has not yet made a determination as to the standard in Title VI cases.<sup>17</sup> Furthermore, the DC Circuit has not yet established the standard for damages in cases arising from Title VI violations. In 2019, the U.S. District court for DC adopted a deliberate indifference standard, noting that it was persuaded by the Fifth, Third, and Tenth Circuits analyses.<sup>18</sup>

<sup>14</sup> *Davis* at 659 quoting *Gebser* at 286; see e.g., *Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655, 664-65 (2d Cir. 2012) (The Second Circuit applying the deliberate indifference standard in a case regarding racial harassment under Title VI); *Pollard v. Georgetown Sch. Dist.*, 132 F. Supp. 3d 208, 230 (D. Mass. Sept. 17, 2015) (The First Circuit adopting the Second Circuit’s test for deliberate indifference.); *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 272-73 (3d Cir. 2014) (The Third Circuit stated that given the parallels between Title VI and the statutes at issue in a similar case involving Section 504 and Title II, the deliberate indifference as a form of intentional discrimination applies with equal force in the Title VI context.); *Fennell v. Marion Indep. Sch. Dist.*, 804 F.3d 398, 408 (5th Cir. 2015) (The Fifth Circuit stating that “[w]e agree that the correct analytical framework for a Title VI student-on-student harassment claim is the deliberate indifference standard.”); *Bryant v. Indep. Sch. Dist. No. 1-38 of Garvin Cty.*, 334 F.3d 928, 934 (10th Cir. 2003) (The Tenth Circuit stating that “[w]e have previously recognized the Supreme Court’s holding in *Davis* and interpreted the four-part standard necessary to sustain a Title IV deliberate indifference claim.”); *Doe v. Galster*, 768 F.3d 611, 619 (7th Cir. 2014) (The Seventh Circuit, while denying that the district was deliberately indifferent in regard to Title IX and Title VI, operated under the assumption that the deliberate indifference standard from *Davis*, applied to both titles.); *Meagley v. City of Little Rock*, 639 F.3d 384, 388 (8th Cir. 2011) (The District Court concluded, and the Eighth Circuit confirmed that deliberate indifference was the appropriate standard for intentional discrimination in Section 504 and Title II cases, as these statutes are modelled after Title VI.); *Doe v. Gladstone Sch. Dist.*, No. 3:10-cv-01172-JE, 2012 U.S. Dist. LEXIS 78591, at \*22 (D. Or. June 6, 2012) (“[T]he language of Title IX is patterned after Title VI. The Supreme Court and the Ninth Circuit have applied Title IX standards, including the ‘deliberate indifference’ standard, to Title VI for ‘most purposes.’”).

<sup>15</sup> *Id.* at 286.

<sup>16</sup> *Fennell v. Marion Indep. Sch. Dist.*, 804 F.3d 398, 408 (5th Cir. 2015).

<sup>17</sup> *Thompson v. Ohio State Univ.*, 639 F. App’x 333, 342 (6th Cir. 2016) (Holding that “[b]ecause we find that Thompson has failed to raise a genuine issue of material fact as to whether OSU was deliberately indifferent in investigating her claim of racial discrimination, we will assume without deciding that deliberate indifference claims are cognizable for racial discrimination under Title VI.”).

<sup>18</sup> *Stafford v. George Washington Univ.*, 2019 U.S. Dist. LEXIS 94088, at \*37-38; see also *Fennell v. Marion Indep.*

#### **IV. Discriminatory Animus and Deliberate Indifference: The Competing Applicable Standards for Damages in Cases Arising from Intentional Discrimination under Section 504 and Title II**

In order to recover damages under Section 504 and Title II, a plaintiff must establish the defendant's discrimination was intentional. The standard for intentional discrimination varies based on the circuit. In the First and Fifth Circuits the Court adopts the more stringent discriminatory animus standard for cases brought under Title II and Section 504 but applies the deliberate indifference standard for Title IX and Title VI cases. Whereas the remaining circuits, including DC, adopt the deliberate indifference standard for Title II and Section 504 cases. The Sixth Circuit has not determined which test to adopt.

Section 504 and Title II were designed to address subtler forms of discrimination in addition to overt discriminatory acts against people with disabilities.<sup>19</sup> In the case, *Alexander v. Choate*, the Supreme Court recounted that “[d]iscrimination against [individuals with disabilities] was perceived by Congress to be most often the product, not of invidious animus, but rather of thoughtlessness and indifference -- of benign neglect.”<sup>20</sup> The Court examined the legislative history of Section 504 including statements made by the representatives who introduced the law and its predecessor into Congress. “Representative Vanik, introducing the predecessor to Section 504 in the House, described the treatment of [individuals with disabilities] as one of the country's ‘shameful oversights,’ which caused [individuals with disabilities] to live among society ‘shunted aside, hidden, and ignored.’”<sup>21</sup>

The following section will first examine the discriminatory animus standard and then the deliberate indifference standard circuit-by-circuit. The Courts that apply the discriminatory animus standard in Section 504 and Title II cases, but the deliberate indifference standard in Title VI cases are ruling inconsistently considering that “[t]he ADA was modeled on the Rehabilitation Act, which had been modeled after Title VI, so it follows rationally that the rights and remedies afforded under both statutes should be governed by Title VI precedent.”<sup>22</sup> Furthermore, the rights, remedies and procedures under Title VI are the same as those under Section 504 and Title II, thus logically courts should apply the same standard for intentional discrimination under each of these statutes.

##### **A. The First and Fifth Circuits use Discriminatory Animus as the Standard for Damages in Cases Arising from Intentional Discrimination under Section 504 and Title II**

*Sch. Dist.*, 804 F.3d 398, 408 (5th Cir. 2015); *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 317 (3d Cir. 2014); *Bryant v. Indep. Sch. Dist. No. I-38*, 334 F.3d 928, 934 (10th Cir. 2003).

<sup>19</sup> *Choate* at 295.

<sup>20</sup> *Id.* at 295-96 (1985).

<sup>21</sup> 117 Cong. Rec. 45974 (1971); see *Choate* at 295-96 quoting 119 Cong. Rec. 5880, 5883 (1973), 118 Cong. Rec. 526 (1972) (“Senator Cranston, the Acting Chairman of the Subcommittee that drafted § 504, described the Act as a response to ‘previous societal neglect,’” and cosponsor Senator Percy described the “legislation leading to the 1973 Act as a national commitment to eliminate the ‘glaring neglect’ of [individuals with disabilities].”).

<sup>22</sup> See *Meagley v. City of Little Rock*, 639 F.3d 384, 389 (8th Cir. 2011).



The less prevalent discriminatory animus standard is applied in cases arising from Section 504 and Title II violations in the First and Fifth Circuits. The standard “requires a showing of prejudice, spite, or ill will”<sup>23</sup> against the plaintiff based on their disability.<sup>24</sup>

### i. First Circuit

In 2018, the First Circuit, in *Leclair v. Mass. Bay Transportation Authority* affirmed the Circuit’s discriminatory animus standard for damages in cases of intentional discrimination under the Title II.<sup>25</sup> The Plaintiff, who is a man with a disability, was exiting a subway car when the wheel of his wheelchair became wedged in the gap between the platform and the car throwing him to the ground.<sup>26</sup> After getting back into his wheelchair, the Plaintiff pushed the emergency service button, however no Massachusetts Bay Transportation Authority (MTBA) employee assisted or spoke with him until he found the MBTA inspector to report the incident.<sup>27</sup> There were no warnings or signs posted to warn individuals in wheelchairs about the risk.<sup>28</sup> The Plaintiff ultimately had to get surgery, in which doctors removed the remaining portion of both legs, preventing him from ever being able to use prosthetic devices.<sup>29</sup>

The Court stated that individuals can recover damages under Title II for intentional discrimination, recognizing that the majority of circuits follow the “deliberate indifference” standard, but firmly states that the First Circuit “adopted the more stringent standard of ‘discriminatory animus.’”<sup>30</sup> The Court found that the defendant did not meet the discriminatory animus standard, which requires the defendant to intentionally discriminate against the plaintiff based on his disability.<sup>31</sup> The Court found that “[t]he complaint does not allege that defendant was aware of incidents prior to plaintiff’s injury where other patrons [who use wheelchairs] were similarly harmed by the alleged ADA violations. Nor does the complaint allege that the MBTA knew that plaintiff had difficulty accessing the subway until he reported the accident to a MBTA inspector.”<sup>32</sup>

### ii. Fifth Circuit

In the Fifth Circuit case, *Marvin H. v. Austin Independent School District*, the Court relied on Supreme Court dicta and precluded the recovery of damages for an educational

<sup>23</sup> *Leclair v. Mass. Bay Transp. Auth.*, 300 F. Supp. 3d 318, 326 (D. Mass. Jan. 5, 2018) citing *Liese v. Indian River County Hosp. District*, 701 F.3d 334, 344 (11th Cir. Fla. Nov. 13, 2012) See also *Laurin v. Providence Hosp.*, 150 F.3d 52, 58 (1st Cir. 1998) (finding that direct evidence is generally necessary to prove discriminatory animus).

<sup>24</sup> *Leclair* at 326.

<sup>25</sup> *Leclair* at 326; see *Nieves-Marquez v. Puerto Rico*, 353 F.3d 108, 126-127 (1st Cir. 2003) (The Court grouped intentional discrimination claims under § 504 and Title II together and applied the same standard).

<sup>26</sup> *Id.* at 321.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Leclair* at 326 citing *Nieves-Marquez v. Puerto Rico* at 126-127; *Carmona-Rivera v. Puerto Rico*, 464 F.3d 14, 17-18 (1st Cir. 2006) (The Court held that the Plaintiff “would need to demonstrate intentional discriminatory animus to prevail” in her Title II claim).

<sup>31</sup> *Leclair* at 326.

<sup>32</sup> *Id.*

placement that violated Section 504, unless the misplacement was intentional or manifested some discriminatory animus.<sup>33</sup> The Fifth Circuit relied on the Supreme Court's plurality opinion in *Guardians Association v. Civil Service Commission*, in which five Justices agreed that there is no private right of action under Title VI, absent proof of intentional discrimination.<sup>34</sup> Justice White stated in dicta that "[i]t follows from the views of these three latter Justices that no compensatory relief should be awarded if discriminatory animus is not shown."<sup>35</sup> In *Marvin H.*, the Fifth Circuit stated that the discriminatory animus standard also applies to claims under Section 504.<sup>36</sup>

In the Fifth Circuit case, *Carter v. Orleans Parish Schools*, the Court reaffirmed the Circuit's discriminatory animus standard alluded to in *Marvin H.*<sup>37</sup> The Court in *Carter* held that the Plaintiffs claim for damages failed. While the Court stated that Section 505 of the Rehabilitation Act, 29 U.S.C. § 794a(a)(2), prescribes for violations of Section 504 the same remedies that are available to redress violations of Title VI, the Court found that the Plaintiff never alleged that the School Board intended to place his children in inappropriate classes or that his children's placement manifested discriminatory animus or ill will, therefore not triggering applicable standard for damages from intentional discrimination.<sup>38</sup> Both of these cases were decided prior to the Supreme Court's rulings in *Gebser* and *Davis*. It is questionable if the Fifth Circuit would continue to apply the discriminatory animus standard or follow the majority of circuits in applying the deliberate indifference standard if intentional discrimination case arose today.

#### **B. The Vast Majority of Circuits employ Deliberate indifference as the Standard for Damages in Cases Arising from Intentional Discrimination under Section 504 and Title II**

The vast majority of the federal Circuits apply the deliberate indifference standard for plaintiffs to obtain damages in cases arising under Section 504 and Title II. In order to satisfy the deliberate indifference standard, plaintiffs must show that: (1) the defendant had actual knowledge or was "on notice" that the federally protected right was being violated or substantially likely to be violated; and (2) the defendant failed to take action to remedy the violation or likelihood of the violation.<sup>39</sup> Furthermore, "[t]he deliberate indifference standard. . . 'does not require a showing of personal ill will or animosity toward the [person with a disability],' but rather can be 'inferred from a defendant's deliberate indifference to the strong

<sup>33</sup> *Marvin H. v. Austin Indep. Sch. Dist.*, 714 F.2d 1348, 1357 (5th Cir. 1983).

<sup>34</sup> *Guardians Ass'n v. Civil Serv. Comm'n*, n.27 463 U.S. 582, 593 (1983).

<sup>35</sup> *Id.* at 607.

<sup>36</sup> *Marvin H.* at 1357; see 29 U.S.C. § 794a(a)(2).

<sup>37</sup> *Carter v. Orleans Par. Pub. Sch.*, 725 F.2d 261, 264 (5th Cir. 1984); *Marvin H. v. Austin Independent School District*, 714 F.2d 1348, 1356-57 (5th Cir.1983).

<sup>38</sup> *Carter v. Orleans Par. Pub. Sch.*, 725 F.2d 261, 264 (5th Cir. 1984); see also *Delano-Pyle v. Victoria County, Tex.*, 302 F.3d 567, 575 (5th Cir. 2002) (rejecting the deliberate-indifference standard).

<sup>39</sup> *Prakel v. Indiana*, 100 F. Supp. 3d 661, 685 (S.D. Ind. 2015) citing *Liese v. Indian River Cty. Hosp. Dist.*, 701 F.3d 334, 344 (11th Cir. 2012); *Barber v. Colorado*, 562 F.3d 1222, 1229 (10th Cir. 2009); *Duvall v. Cty. of Kitsap*, 260 F.3d 1124, 1139 (9th Cir. 2001).

likelihood that pursuit of its questioned policies will likely result in a violation of federally protected rights.”<sup>40</sup>

### i. Second Circuit

In *Bartlett v. New York State Board of Law Examiners*, the Court found that Bartlett was entitled to damages if her rights under Title II were violated.<sup>41</sup> The Board denied Dr. Bartlett's request for accommodations, because a learning disabilities expert did not believe she had dyslexia or a reading disability.<sup>42</sup> The expert determined this after Dr. Bartlett scored above the thirtieth percentile on two subtests of the Woodcock Reading Mastery Test-Revised, which are used to assess learning disabilities.<sup>43</sup>

The Court held that plaintiffs could recover monetary damages under either Title II or Section 504 after finding a statutory violation resulting from “deliberate indifference” to the rights secured to the person with the disability by the acts.<sup>44</sup> The Court held, “[i]n the context of the Rehabilitation Act, intentional discrimination against [a person with a disability] does not require personal animosity or ill will.”<sup>45</sup> Rather, intentional discrimination may be inferred when a “policymaker acted with at least deliberate indifference to the strong likelihood that a violation of federally protected rights will result from the implementation of the [challenged] policy . . . [or] custom.”<sup>46</sup> The Court held that the exclusive reliance on the two Woodcock subtests resulted in a violation of her federally protected rights.<sup>47</sup>

In the case, *Loeffler v. Staten Island University Hospital*, the Second Circuit applied the deliberate indifference standard. The Plaintiffs, both of whom were individuals with hearing impairments, were denied an American Sign Language (ASL) interpreter and a Text Telephone (TTY) device after numerous requests.<sup>48</sup> The Court held that a reasonable jury could conclude that the Hospital had actual knowledge of the Plaintiffs' need for an ASL interpreter, had the authority to correct the discrimination, and failed to respond adequately.<sup>49</sup> While *Loeffler* dealt exclusively with Section 504, the Second Circuit has co-opted the standard and applies the deliberate indifference standard for intentional discrimination under Title II as well.<sup>50</sup>

<sup>40</sup> Meagley at 389 quoting *Barber v. Colorado*, 562 F.3d 1222, 1228-9 (10th Cir. 2009).

<sup>41</sup> *Bartlett v. N.Y. State Bd. of Law Exam'rs*, 226 F.3d 69, 86 (2d Cir. 2000).

<sup>42</sup> *Id.* at 75.

<sup>43</sup> *Id.* at 76.

<sup>44</sup> *Id.*

<sup>45</sup> *Bartlett v. N.Y. State Bd. of Law Exam'rs*, 156 F.3d 321, 331 (2d Cir. 1998), *vacated on other grounds* by 527 U.S. 1031 (1999); see *Rambo v. Director, Office of Workers' Compensation Programs*, 118 F.3d 1400, 1406 (9th Cir. 1997) (citing *Oxford House-C v. City of St. Louis*, 843 F. Supp. 1556, 1577 (E.D. Mo. Jan. 28, 1994)).

<sup>46</sup> *Bartlett v. N.Y. State Bd. of Law Exam'rs*, 156 F.3d 321, 331 (2d Cir. 1998); *Ferguson v. City of Phoenix*, 931 F. Supp. 688, 697 (D. Ariz. July 17, 1996) (internal quotation marks and citations omitted) (first alteration in original); see also *Canton v. Harris*, 489 U.S. 378, 385 (1989).

<sup>47</sup> *Id.* at 78.

<sup>48</sup> *Loeffler v. Staten Island Univ. Hosp.*, 582 F.3d 268, 270, 276 (2d Cir. 2009).

<sup>49</sup> *Loeffler* at 276.

<sup>50</sup> *Gershanow v. Cnty. Of Rockland*, 2014 U.S. Dist. LEXIS 37004, 2014 WL 1099821, at \*4 (S.D.N.Y. Mar. 20, 2014); see also *Borum v. Swisher Cty.*, No. 2:14-CV-127-J, 2014 U.S. Dist. LEXIS 140321, at \*23 (N.D. Tex. Sept. 29, 2014) (“Although *Loeffler* involves the Rehabilitation Act and *Garcia* involves Title II, district courts in the Second Circuit have treated *Loeffler* as overruling *Garcia*.”).

## ii. Third Circuit

In the Third Circuit case, *S.H. v. Lower Merion School District*, the Court found that the district was not deliberately indifferent toward S.H. by mislabeling her as a disabled student because there was no evidence that the district knew, prior to the doctor's evaluation, that S.H. had likely been misidentified as having a learning disability.<sup>51</sup>

In deciding which standard to apply, the Third Circuit “follow[ed] in the footsteps of a majority of our sister courts and h[e]ld that a showing of deliberate indifference may satisfy a claim for compensatory damages under Section 504 and Section 202 of the ADA.”<sup>52</sup> According to the Third Circuit, the deliberate indifference standard is better suited than the discriminatory animus alternative to meet the remedial goals of the Section 504 and Title II.<sup>53</sup> In determining which standard to apply, the Third Circuit examined the Supreme Court's review of the legislative history of Section 504 and Title II.<sup>54</sup>

## iii. Fourth Circuit

While the Fourth Circuit has not explicitly ruled on the standard for damages in intentional discrimination cases brought under Title II and Section 504, the Circuit has clearly rejected the higher “discriminatory animus” standard.<sup>55</sup> In 2019, one district court within the Fourth Circuit decided that it would apply the deliberate indifference standard.<sup>56</sup>

In the 2019 district court decision, the Plaintiff, who uses a wheelchair, regularly took the bus as his primary mode of transportation.<sup>57</sup> During a twenty-seven month period in which he took the bus, he alleged that he encountered difficulties using Central Midlands Regional Transit Authority's bus services, including over thirty instances where the wheelchair lift malfunctioned, or a driver was discourteous or failed to properly secure his wheelchair.<sup>58</sup> During these instances, the Plaintiff was denied service, left stranded waiting for another bus or stranded on a bus for long periods of time waiting for a maintenance person to fix the wheelchair lift system.<sup>59</sup> These instances resulted in substantial delays and caused him fear and anxiety.<sup>60</sup> The Court,

<sup>51</sup> *S.H. v. Lower Merion Sch. Dist.*, 729 F.3d 248, 267 (3d Cir. 2013).

<sup>52</sup> *Id.* at 263.

<sup>53</sup> *Id.* at 264.

<sup>54</sup> *Id.*; Choate at 295; see also *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 944-45 (9th Cir. 2011) (applying Choate's discussion of the enactment of Section 504 to Title II).

<sup>55</sup> *Smith v. N.C. Dep't of Safety*, No. 1:18CV914, 2019 U.S. Dist. LEXIS 135985, at \*5 (M.D.N.C. Aug. 12, 2019).

<sup>56</sup> *Green v. Cent. Midlands Reg'l Transit Auth.*, No. 3:17-cv-02667-CMC, 2019 U.S. Dist. LEXIS 67794, at \*20 (D.S.C. Apr. 22, 2019).

<sup>57</sup> *Id.* at \*2.

<sup>58</sup> *Id.* at \*2.

<sup>59</sup> *Id.* at \*3, 17-18.

<sup>60</sup> *Id.* at \*4; see *Godbey v. Iredell Mem'l Hosp., Inc.*, No. 5:12-cv-00004-RLV-DSC, 2013 U.S. Dist. LEXIS 117129, 2013 WL 4494708, at \*4-6 (W.D.N.C. Aug. 19, 2013) (observing that “the Fourth Circuit has not yet determined what standard of proof a plaintiff must meet to demonstrate discriminatory intent under the [Rehabilitation Act,]” and acknowledging that the Second, Eighth, Ninth, Tenth, and Eleventh Circuits have adopted the “deliberate indifference” as the applicable standard for damages under Title II or under Section 504, while the Fifth Circuit has rejected it. Ultimately the district court adopted the deliberate indifference standard.). See also *Smith v. N.C. Dep't of Safety*, No. 1:18CV914, 2019 U.S. Dist. LEXIS 135985, at \*6 (M.D.N.C. Aug. 12, 2019).

following the majority of circuits, applied the deliberate indifference standard and denied summary judgement.<sup>61</sup>

#### iv. Sixth Circuit

The Sixth Circuit has not clearly indicated that it follows the deliberate indifference standard, however, it has alluded to deliberate indifference as the appropriate standard in several cases.<sup>62</sup>

The Sixth Circuit appeared to apply the deliberate indifference standard in *S.S. v. East Kentucky University* when a middle school student with various disabilities, including cerebral palsy, attention deficit/hyperactivity disorder (ADHD) claimed he was harassed and bullied on numerous occasions.<sup>63</sup> The Court found no evidence that the school acted with deliberate indifference “or that they had an attitude of permissiveness that amounted to discrimination.”<sup>64</sup> The school was not deliberately indifferent because they investigated the incidents and disciplined the responsible students, monitored S.S. and separated him from his harassers when necessary.<sup>65</sup> The Court compared the events in this case with the events in *K.M. v. Hyde Park Central School District* and contrasted the events to *Biggs v. Bd. of Educ.*<sup>66</sup> In *K.M.*, a child with a disability had been repeatedly subjected to verbal abuse and physical attacks over the course of two years, including disability-related slurs.<sup>67</sup> The plaintiff, K.M. on behalf of her child, D.G., and D.G. himself reported the incidents to the school officials, but the school failed to take any action in response. During a particular incident, D.G. was beaten up on a school bus, and the school advised K.M. to keep D.G. out of school for an unspecified amount of time and provided no educational services for him. Additionally, the incidents on the bus were not investigated and D.G. became suicidal. At the District Court trial, the Court denied the school’s motion for summary judgment, holding that triable issues of fact existed with respect to the school district’s lack of response to the student’s repeated complaints.<sup>68</sup>

Whereas, in *Biggs*, the student and their mother reported similar harassment and the school took action by “counseling the child, meeting with the offending students, sending letters to parents, threatening the offenders with suspension, and alerting teachers to the problem,” which led the Court to grant the motion for summary judgement in favor of the school.<sup>69</sup> The

<sup>61</sup> *Green* at 22.

<sup>62</sup> *K.C. v. Cty. Schs.*, 306 F. Supp. 3d 970, 978 (W.D. Ky. Jan. 28, 2018) quoting *McCoy v. Bd. of Educ., Columbus City Sch.*, 515 F. App’x 387, 391 (6th Cir. 2013) (“In the context of teacher-on-student sexual harassment under Title IX, many principles of which have been applied to Title II and Section 504, the Sixth Circuit has held that “[i]f a plaintiff proves that (1) a school district had actual notice of the sexual harassment; and (2) exhibited deliberate indifference in light of such notice, a school district may be held liable for damages.”).

<sup>63</sup> *S.S. v. E. Ky. Univ.*, 532 F.3d 445, 448 (6th Cir. 2008).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Biggs v. Bd. of Educ.* 229 F. Supp. 2d 437, 445 (D. Md. Mar. 6, 2002).

<sup>67</sup> *K.M. v. Hyde Park Cent. Sch. Dist.*, 381 F. Supp. 2d 343 (S.D.N.Y. Aug. 11, 2005).

<sup>68</sup> *S.S. v. E. Ky. Univ.*, 532 F.3d 445, 455 (6th Cir. 2008); see also *K.M. at* 360-361 (The Court stated that “a reasonable juror, looking at the evidence discussed above, could conclude that D.G. was subjected to severe and pervasive peer abuse, that this abuse was known to teachers and administrators in the District, and that it so altered the conditions of D.G.’s school experience that he felt he could not attend school for the better part of a year.”).

<sup>69</sup> *Id.*, at 455 referencing *Biggs* at 445.

Court in *S.S.* stated that the school's actions closely mirrored the school's actions in *Biggs*, including meeting with the offending students, communicating with parents and disciplining offending students.<sup>70</sup> The Sixth Circuit affirmed the District Court's grant of summary judgement for the defendants, concluding that the school district did not act deliberately indifferent to the harassment.

More recently, the Sixth Circuit applied the deliberate indifference standard in the case of R.K. R.K.'s parents wanted to send him to a certain elementary school, which was one of five elementary schools in the county that children in R.K.'s neighborhood were zoned to attend.<sup>71</sup> R.K. had been diagnosed with Type-1 diabetes and as a result needed periodic pen needle insulin injections.<sup>72</sup> The school board concluded that R.K. should attend a school with a full-time nurse on staff and refused to enroll him at the parent's preferred elementary school.<sup>73</sup> During the school year, R.K. transitioned from the pen needle to an insulin pump, which automatically delivered insulin. As a result, R.K.'s parents renewed their request to transfer R.K. to the specific elementary school, but the school board still denied the request to transfer R.K. due to the lack of a full time nurse.<sup>74</sup> The next year, R.K.'s parents sought to enroll him again and produced an updated diabetes-management plan from R.K.'s physician, which stated R.K. "[d]oes not require [the assistance of a] nurse."<sup>75</sup> The district again denied the parent's request to change elementary schools. By second grade, R.K. was fully independent with his insulin pump and the school approved the transfer at his parents' request.<sup>76</sup> The parents claimed that the school district violated their child's rights under Section 504 and Title II by not permitting R.K. to attend their preferred elementary school.<sup>77</sup>

The Sixth Circuit implicitly accepted the deliberate indifference standard though it denied R.K. the relief sought. The Court stated, "[t]he parties agree that, to obtain money damages under the ADA and the Rehabilitation Act, R.K. must show that the school board acted with 'deliberate indifference' towards his federally-protected rights."<sup>78</sup> The Court held that the school board did not act with deliberate indifference because it lacked actual knowledge that its actions would likely violate R.K.'s rights.<sup>79</sup>

## v. Seventh Circuit

In *Prakel v. Indiana*, several courts denied the Plaintiff, who is deaf and uses ASL as his primary mode of communication, an interpreter on multiple occasions. The Seventh Circuit in adopting the deliberate indifference standard, explained its reasoning, "the deliberate indifference standard more closely aligns with the remedial goals of the ADA and Rehabilitation

<sup>70</sup> *Id.* at 455.

<sup>71</sup> *R.K. v. Bd. of Educ.*, 637 F. App'x 922, 923 (6th Cir. 2016).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 924.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 925.

<sup>78</sup> *Id.*; see *Hill v. Bradley Cnty. Bd. of Educ.*, 295 F. App'x 740, 742 (6th Cir. 2008) (The Circuit Court did not question the lower Court's analysis for Section 504 claims using a deliberate indifference standard).

<sup>79</sup> *R.K.* at 925.

Act.”<sup>80</sup> The Court’s denial of the request for an interpreter deprived the Plaintiff of full access the Court proceedings in which his mother was a defendant. The Plaintiff alleges that the state violated Title II and Section 504 by failing to provide him with equal access to the Court.<sup>81</sup> The Seventh Circuit held that “[a]fter careful review of the applicable caselaw, we share the Third Circuit’s approach in concluding that the deliberate indifference standard more closely aligns with the remedial goals of the ADA and Rehabilitation Act.”<sup>82</sup> The Court stated that to show deliberate indifference, “[the Plaintiff] must establish that Defendants (1) knew that harm to a federally protected right was substantially likely and; (2) failed to act on that likelihood.”<sup>83</sup>

The Plaintiff satisfied the first prong, when the Courts denied him an interpreter, knowing that the denial would violate his federally protected rights. On numerous occasions he alerted the Courts that he needed an ASL interpreter to fully access his mother’s criminal proceedings, an accommodation which is required by law. The Seventh Circuit held that the “[d]efendants were indisputably in a position to find and consult the applicable regulations and technical assistance and recognize the substantial likelihood that the failure to provide at least some sort of accommodation to the Plaintiff to enable him to access public Court proceedings as a spectator would violate his federally protected rights.”<sup>84</sup>

The Plaintiff satisfied the second prong of the analysis by establishing that the defendant deliberately failed to satisfy its duty to act in response to the accommodation request.<sup>85</sup> It is the defendant’s duty to investigate proper accommodations and give preference to the plaintiff’s preferred accommodation.<sup>86</sup> The Court stated that “a reasonable jury could find that the Dearborn Courts made deliberate decisions to deny [the Plaintiff]’s requests without making sufficient effort to determine whether it would have been possible to provide the requested accommodation without fundamental alteration or undue burden, or to consider whether some alternate accommodation could be provided in an effort to ensure that [the Plaintiff] could understand and access the public Court proceedings at issue.”<sup>87</sup> The Court denied the motion for summary judgement on the question of deliberate indifference and sent the case to a jury.<sup>88</sup>

## vi. Eighth Circuit

In *Meagley v. City of Little Rock*, the Court found that deliberate indifference was the appropriate standard to prove intentional discrimination under both Title II and Section 504 in order to recover damages.<sup>89</sup>

<sup>80</sup> *Prakel v. Indiana*, 100 F. Supp. 3d 661, 684-85 (S.D. Ind. Mar. 30, 2015) citing *Durrell*, 729 F.3d at 264-65 (finding that requiring a plaintiff to prove discriminatory animus “would run counter to congressional intent as it would inhibit Section 504’s [and Title II’s] ability to reach knowing discrimination in the absence of animus.”).

<sup>81</sup> *Prakel* at 670.

<sup>82</sup> *Id.* at 684.

<sup>83</sup> *Id.* at 685 citing *Liese*, 701 F.3d at 344 (quoting *T.W. ex rel. Wilson v. Sch. Bd. of Seminole Cnty, Fla.*, 610 F.3d 588, 604 (11th Cir. 2010)).

<sup>84</sup> *Prakel* at 685. The Court used the term “accommodation” but should have used the term “auxiliary aid” instead.

<sup>85</sup> *Id.* at 685 citing *Duwall*, 260 F.3d at 1139-40.

<sup>86</sup> *Prakel* at 686. The Court uses the term “accommodation” but should have used the phrase “mode of communication” instead.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Meagley* at 388.

Ultimately, the Court found that the Plaintiff's claim, which arose from an incident at the Little Rock Zoo, in which her rental scooter tipped over an incline, did not satisfy this standard.<sup>90</sup> The claim did not meet the deliberate indifference standard because there was no evidence that the zoo was aware that the bridges near the Siamang Exhibit did not comply with Title II guidelines.<sup>91</sup> Prior to the Plaintiff's accident, no zoo patron had ever turned over in a scooter on that bridge.<sup>92</sup> Additionally, the zoo performed an evaluation for purposes of the transition plan in an earlier case.<sup>93</sup> In conducting that evaluation, the zoo did not identify the bridges as having any accessibility barriers.<sup>94</sup>

### vii. Ninth Circuit

The leading case in the Ninth Circuit, *Duvall v. County of Kitsap*, which also applies the deliberate indifference standard, involved a man with a hearing impairment. In that case, the Plaintiff alleged that the Superior Court failed to accommodate his hearing impairment during his state Court divorce proceedings.<sup>95</sup> The Plaintiff made several requests for a videotext display of the Court proceedings, but the county ignored and denied his requests. Instead, the defendants placed the proceedings in a room with specialized equipment for people with hearing impairments, which the Plaintiff argued is inappropriate for his hearing impairment and made hearing the proceedings more difficult. Prior to the Ninth Circuit also found that the deliberate indifference standard is better suited at meeting the remedial goals of Title II than is the discriminatory animus alternative adopted by the First and Fifth Circuits.<sup>96</sup> "Deliberate indifference requires both knowledge that a harm to a federally protected right is substantially likely, and a failure to act upon that the likelihood."<sup>97</sup>

When the Plaintiff alerts the public entity to his/her need for an accommodation, the entity is "put on notice" and the Plaintiff has satisfied the first element of the two-part deliberate indifference test.<sup>98</sup> Furthermore, merely speculating that a requested accommodation is not feasible, without further investigation, does not satisfy the reasonable accommodation.<sup>99</sup> Additionally, the public entity is required to give primary consideration to the individual's specific requests when determining what type of auxiliary aid and service is necessary.<sup>100</sup> To satisfy the second part of the test, the Plaintiff must show that the defendant's actions were deliberate and not purely negligent.<sup>101</sup> The Court reversed the order of summary judgement in

<sup>90</sup> *Id.* at 389.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Duvall v. Cty. of Kitsap*, 260 F.3d 1124, 1140 (9th Cir. 2001). The Court here uses "accommodate" but should have used the phrase "provide another mode of communication" instead.

<sup>96</sup> *Id.* at 1139.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*; *Wong v. Regents of the Univ. of Cal.*, 192 F.3d 807, 818 (9th Cir. 1999).

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 1139-40 (The Court stated, "[b]ecause in some instances events may be attributable to bureaucratic slippage that constitutes negligence rather than deliberate action or inaction, we have stated that deliberate indifference does



favor of the defendants, after the Plaintiff presented sufficient evidence to create a triable issue as to whether defendants had notice of his need for the accommodation and failed to take the necessary action.<sup>102</sup>

The Ninth Circuit held “...that plaintiffs must prove a *mens rea* of ‘intentional discrimination,’ to prevail on a Section 504 claim, but that that standard may be met by showing ‘deliberate indifference,’ and not only by showing ‘discriminatory animus.’”<sup>103</sup>

### viii. Tenth Circuit

The Tenth Circuit in *Barber v. Colorado Department of Revenue*, laid out a two-prong test for deliberate indifference: (1) “knowledge that a harm to a federally protected right is substantially likely,” and (2) “failure to act upon that . . . likelihood.”<sup>104</sup> In the case, the Plaintiffs alleged that the Colorado DMV acted with deliberate indifference to their federally protected rights under Section 504, when the DMV had knowledge of the harm and failed to act accordingly.<sup>105</sup> The Plaintiff, a fifteen year old girl, and her mother challenged a Colorado statute, which they alleged “intentionally discriminated against the Plaintiff when it required a ‘parent, stepparent, or guardian’ with a valid driver’s license to supervise [their child’s] driving practice, as required by her minor’s instruction permit.”<sup>106</sup> Facially, the law did not discriminate against the Plaintiffs, however her mother was blind and could not hold a driver’s license and thus could not supervise her daughter driving.<sup>107</sup> In addition, the Plaintiff’s father did not have a license, did not have custody over his daughter and lived out of state.<sup>108</sup> The Plaintiffs requested a reasonable accommodation from the DMV, to allow another licensed driver, such as the Plaintiff’s grandfather to supervise her.<sup>109</sup> The State Attorneys General said that the Plaintiff’s grandfather could not supervise her driving, unless he was “a legally appointed guardian.”<sup>110</sup>

The court applied the two-prong test for determining whether the defendants were deliberately indifferent and found that the DMV did not act with deliberate indifference because

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not occur where a duty to act may simply have been overlooked, or a complaint may reasonably have been deemed to result from events taking their normal course. Rather, in order to meet the second element of the deliberate indifference test, a failure to act must be a result of conduct that is more than negligent and involves an element of deliberateness.”). *See also Ferguson v. City of Phoenix*, 157 F.3d 668, 675 (9th Cir. 1998).

<sup>102</sup> *Duvall* at 1140.

<sup>103</sup> *Mark H. v. Lemahieu*, 513 F.3d 922, 938 (9th Cir. 2008).

<sup>104</sup> *Id.* at 1229 quoting *Duvall*, 260 F.3d at 1139; *see Powers v. MJB Acquisition Corp.*, 184 F.3d 1147, 1153 (10th Cir. 1999) (“Further, intentional discrimination can be inferred from a defendant’s deliberate indifference to the strong likelihood that pursuit of its questioned policies will likely result in a violation of federally protected rights.”); *see also Havens v. Colo. Dep’t of Corr.*, 897 F.3d 1250, 1264 (10th Cir. 2018) (“Deliberate indifference is sufficient to satisfy the intentional-discrimination requirement for compensatory damages under § 504.”).

<sup>105</sup> *Barber v. Colorado*, 562 F.3d 1222, 1229 (10th Cir. 2009).

<sup>106</sup> *Id.* at 1124-25.

<sup>107</sup> *Id.* at 1125.

<sup>108</sup> *Id.* at 1125.

<sup>109</sup> *Id.* at 1125.

<sup>110</sup> *Id.* at 1126 (The State defined “guardian” as “a person lawfully invested with the power, and charged with the duty, of taking care of the person and managing the property and rights of another person, who, for some peculiarity of *status*, or defect of age, understanding[, or] self-control, is considered incapable of administering his own affairs.”)

it offered the option of some guardianship as a solution and the DMV knew that the legislature was quickly amending the statute.<sup>111</sup>

### ix. Eleventh Circuit

In the Eleventh Circuit case, *Liese v. Indian River County Hospital*, both the Plaintiff and her spouse had hearing impairments and brought a suit under Section 504 after the hospital allegedly failed to communicate effectively when the plaintiff sought medical treatment.<sup>112</sup> The Court found that the defendant's deliberate indifference, if proven, would be sufficient to establish intentional discrimination under Section 504.<sup>113</sup> The Plaintiff and her husband are deaf and communicate using ASL and can read and write at grade-school levels.<sup>114</sup> Upon arriving at the hospital, the Plaintiff passed written notes to the front desk employee expressing that she was experiencing chest pain and dizziness and requested a sign language interpreter.<sup>115</sup> Next, the Plaintiff interacted with numerous medical personnel all without an interpreter, albeit repeating her request for an interpreter.<sup>116</sup> Ultimately, the physician decided that the Plaintiff needed surgery, provided her with consent forms, which she signed, despite not being able to understand them.<sup>117</sup>

To resolve the case, the Court looked to Title VI's framework, because "the text of the RA directs us to look to Title VI law to determine the scope of a plaintiff's remedies for Section 504 violations."<sup>118</sup> Additionally, the Court looked to Title IX caselaw, specifically *Gebser*, in order to guide its definition of discriminatory intent, stating that "[a]lthough the RA does not explicitly reference Title IX, Title IX case law is nonetheless informative because of the striking similarities between Title IX and the RA."<sup>119</sup> Based on its review of relevant caselaw, the Eleventh Circuit concluded that the deliberate indifference standard was consistent with the objective of Section 504; "to avoid the use of federal resources to support discriminatory practices" and "to provide individual citizens effective protection against those practices."<sup>120</sup> The Court held that a reasonable jury could conclude that the medical personnel with the necessary decision-making authority acted deliberately indifferent to the Plaintiffs' rights under Section 504 and the evidence was sufficient to warrant a trial on the claim.<sup>121</sup>

### x. DC District

The DC District concluded that it would follow the majority of circuits in adopting the deliberate indifference standard for cases arising from violations of Title II and Section 504.<sup>122</sup>

<sup>111</sup> *Id.* at 1230.

<sup>112</sup> *Liese v. Indian River Cty. Hosp. Dist.*, 701 F.3d 334, 336 (11th Cir. 2012).

<sup>113</sup> *Id.* at 336.

<sup>114</sup> *Id.* at 338.

<sup>115</sup> *Id.* at 339.

<sup>116</sup> *Id.* at 339-340.

<sup>117</sup> *Id.* at 340-341.

<sup>118</sup> *Id.* at 345.

<sup>119</sup> *Id.* at 346.

<sup>120</sup> *Liese v. Indian River Cty. Hosp. Dist.*, 701 F.3d 334, 347 (11th Cir. 2012) citing *Gebser*, 524 U.S. at 286 (quoting *Cannon v. Univ. of Chicago*, 441 U.S. 677, 704 (1979)).

<sup>121</sup> *Id.* at 356.

<sup>122</sup> *Pierce v. District of Columbia*, 128 F. Supp. 3d 250, 279 (D.D.C. Sept. 11, 2015).

In a case involving an incarcerated individual who was deaf, *Pierce v. District of Columbia*, the DC Circuit applied the deliberate indifference standard. The Plaintiff needed an interpreter, which he requested but was consistently denied. The correctional facility's failure to provide an accommodation so that the Plaintiff could effectively communicate throughout his fifty-one-day sentence "forced [him] to serve his prison time in abject isolation, generally unaware of what was going on around him and unable to communicate effectively with prison officials, prison doctors, his counselor, his teacher, or his fellow inmates."<sup>123</sup> The Court found that the correctional facility's failure to evaluate the Plaintiff's need for an interpreter and to provide the auxiliary aids constituted a violation of Section 504 and Title II, which easily satisfied the deliberate indifference standard and therefore entitled the Plaintiff to damages.<sup>124</sup>

## V. Conclusion

While none of the cases directly address the standard for damages for intentional discrimination under the civil rights statutes within the housing context, the case law may be applied to circumstances involving housing. While, the majority of circuits use the deliberate indifference standard, if HUD is litigating cases in the First or Fifth Circuits, it should be aware that the discriminatory animus standard may apply in order to obtain damages for complainants under Section 504 and Title II.

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<sup>123</sup> *Id.* at 253-254.

<sup>124</sup> *Id.* at 279.

**Applicant Details**

First Name **Sarah**  
 Middle Initial **W.**  
 Last Name **Gamble**  
 Citizenship Status **U. S. Citizen**  
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 Address

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**Davis**  
**State/Territory**  
**California**  
**Zip**  
**95616**  
**Country**  
**United States**

Contact Phone  
 Number **(707) 287-8445**

**Applicant Education**

BA/BS From **Pomona College**  
 Date of BA/BS **May 2017**  
 JD/LLB From **University of California, Davis School of Law (King Hall)**  
[http://www.nalplawschoolsonline.org/ndlsdir\\_search\\_results.asp?lscd=90502&yr=2011](http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=90502&yr=2011)  
 Date of JD/LLB **May 14, 2022**  
 Class Rank **20%**  
 Law Review/Journal **Yes**  
 Journal(s) **UC Davis Law Review**  
**Journal of International Law and Policy**  
 Moot Court Experience **No**

**Bar Admission**

### **Prior Judicial Experience**

Judicial  
Internships/           **Yes**  
Externships  
Post-graduate  
Judicial Law           **No**  
Clerk

### **Specialized Work Experience**

#### **Recommenders**

Bennoune, Karima  
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#### **References**

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Paige Davidson, Law Clerk to the Honorable Troy L. Nunley  
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(404) 626-3618

Karima Bennoune, Professor of Law and U.N. Special Rapporteur in

the field of cultural rights  
kebennoune@ucdavis.edu

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

**SARAH GAMBLE**

400 Mrak Hall Drive, Davis, CA 95616 ▪ 707.287.8445 ▪ [swgamble@ucdavis.edu](mailto:swgamble@ucdavis.edu)

June 14, 2021

The Honorable Elizabeth W. Hanes  
United States District Court for the Eastern District of Virginia  
Spottswood W. Robinson III and Robert R. Merhige, Jr., Federal Courthouse  
701 East Broad Street  
Richmond, VA 23219

Dear Judge Hanes:

I am a rising third-year student at UC Davis School of Law. I would like to be considered for a position as one of your law clerks starting in August 2022.

I am confident I could contribute meaningfully to your chambers. I received the Witkin Award for the highest grade in two of my classes: Legal Research and Writing and International Human Rights. Additionally, I am currently a Senior Articles Editor of the *UC Davis Law Review* and a research assistant for the U.N. Special Rapporteur in the field of cultural rights.

Last summer I externed for Judge Troy L. Nunley of the U.S. District Court for the Eastern District of California. I thoroughly enjoyed examining all sides of difficult legal issues, and working to draft orders that were clear, well cited, and just. This experience made me eager to apply for this clerkship.

Enclosed are my resume, writing sample, and transcripts. My letters of recommendation will be sent separately. My recommenders are:

William Dodge, *Professor of Law*  
[wsdodge@ucdavis.edu](mailto:wsdodge@ucdavis.edu)  
(510) 421-0494

Paige Davidson, *Law Clerk to the Honorable Troy L. Nunley*  
[pdavidson@caed.uscourts.gov](mailto:pdavidson@caed.uscourts.gov)  
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Karima Bennoune, *Professor of Law and U.N. Special Rapporteur in the field of cultural rights*  
[kebennoune@ucdavis.edu](mailto:kebennoune@ucdavis.edu)

Clayton Tanaka, *Professor of Law and Director of Legal Research and Writing*  
[cstanaka@ucdavis.edu](mailto:cstanaka@ucdavis.edu)  
(530) 754-9806

I would welcome the opportunity to interview with you, and look forward to hearing from you soon. Thank you for your time and consideration.

Sincerely,



Sarah Gamble

## SARAH GAMBLE

400 Mrak Hall Drive, Davis, CA 95616 ▪ 707.287.8445 ▪ swgamble@ucdavis.edu

### EDUCATION

**University of California, Davis School of Law (GPA: 3.787, Class Rank: Top 20%)** Expected May 2022  
J.D. Candidate

- Witkin Award for Academic Excellence in Legal Research and Writing, International Human Rights
- *UC Davis Law Review*, Senior Articles Editor
- King Hall Negotiations Team, Internal Competitions Co-Chair
- 8th Annual 1L Negotiations Competition, Finalist

**Pomona College**, Claremont, CA May 2017  
B.A., Public Policy Analysis

- Captain, Pomona-Pitzer Varsity Volleyball Team
- Pomona College Scholar, SCIAC All-Academic Team

**School for International Training**, Kigali, Rwanda Spring 2016  
Post Genocide Restoration and Peacebuilding, Study Abroad

### WORK EXPERIENCE

**Center for Justice and Accountability** May 2021 - Present  
*Litigation Intern*

- Assist staff attorneys in active and potential litigation in the U.S. and abroad
- Perform research and analyze key legal issues related to international and human rights law and draft corresponding memoranda

**United States District Court, Eastern District of California** May 2020 - July 2020  
*Judicial Extern for Judge Troy L. Nunley*

- Researched substantive and procedural issues, including jurisdictional discovery, excessive force, and Title IX claims
- Drafted orders on motions for withdrawal, remand, and motions to dismiss

**University of California, Davis School of Law** May 2020 - Present  
*Research Assistant for Professor Karima Bennouna, U.N. Special Rapporteur in the field of cultural rights*

- Compile data, conduct research, and draft memoranda related to cultural rights and current events
- Bluebook, cite check, and prepare articles and reports for submission to the U.N. and various journals

**Clif Bar and Company** July 2017 - March 2019  
*Community Projects Coordinator*

- Worked with the legal department to reissue a supplier code of conduct and implement social compliance auditing
- Conducted crop risk analysis, as well as various research projects related to supply chain risk mitigation and ESG
- Organized and led a companywide service day for 500+ employees, involving over 30 technical projects
- Managed CLIF CORPS, Clif Bar's internal giving and engagement program for 1,100 employees

### VOLUNTEER EXPERIENCE

**American Civil Liberties Union** Jan. 2019 - June 2019  
*Intake Counselor*

- Supported the Intake Program by conducting initial interviews, managing the database and assisting attorneys
- Reviewed and evaluated requests for assistance through the Civil Liberties hotline

### OTHER

**Certifications:** LexisNexis Advance Proficiency Certification, Westlaw Advanced Legal Research Certification

**Associations:** King Hall Legal Foundation, King Hall International Law Association

**Interests:** Amateur bird watcher, Catan enthusiast, avid volleyball player



UNOFFICIAL PAGE: 1

SARAH WEEKS GAMBLE

ID 998-754-989

PROFESSIONAL ACADEMIC RECORD

CURRENT COLLEGE(S): LAW  
CURRENT MAJOR(S): LAW

ADMITTED: FALL SEMESTER 2019

INSTITUTION CREDIT:

FALL SEMESTER 2019						
LAW	200	INTRODUCTION TO LAW	S	1.00		.00
LAW	202	CONTRACTS	A-	4.00	14.80	
LAW	203	CIVIL PROCEDURE	B	5.00	15.00	
LAW	206	CRIMINAL LAW	B+	3.00	9.90	
LAW	207	RESEARCH & WRITING I	A	2.00	8.00	
		COMPL	ATTM	PSSD	GPTS	GPA
TERM:	15.00	14.00	14.00	47.70	3.407	
UC CUM:	15.00	14.00	14.00	47.70	3.407	

SPRING SEMESTER 2020						
LAW	200L	LAWYERING PROCESS LAB	S	.00	.00	
LAW	200S	LAWYERING PROCESS	S	2.00	.00	
LAW	201	PROPERTY	S	4.00	.00	
LAW	204	TORTS	S	4.00	.00	
LAW	205	CONSTITUTIONAL LAW I	S	4.00	.00	
LAW	208	LGL RESRCH & WRITING II	S	2.00	.00	
		COMPL	ATTM	PSSD	GPTS	GPA
TERM:	16.00	.00	.00	.00	.000	
UC CUM:	31.00	14.00	14.00	47.70	3.407	

FALL SEMESTER 2020						
LAW	215	BUSINESS ASSOCIATIONS	A	4.00	16.00	
LAW	248CA	UN HUMAN RTS PRACTICUM I	A	2.00	8.00	
LAW	252	INT'L LITIGTN & ARBITRTN	A	3.00	12.00	
LAW	258A	LEGAL ETHICS	A+	3.00	12.00	
LAW	414A	NEGOTIATIONS BOARD	S	1.00	.00	
LAW	416	LAW REVIEW WRITER	S	2.00	.00	
		COMPL	ATTM	PSSD	GPTS	GPA
TERM:	15.00	12.00	12.00	48.00	4.000	
UC CUM:	46.00	26.00	26.00	95.70	3.680	

SPRING SEMESTER 2021						
LAW	219	EVIDENCE	A	3.00	12.00	
LAW	227A	CRIMINAL PROCEDURE	A	4.00	16.00	
LAW	248B	INTERNAT'L HUMAN RIGHTS	A+	2.00	8.00	
LAW	253	POLICY ADVOCACY	A	2.00	8.00	
LAW	267	CIVIL RIGHTS LAW	A	2.00	8.00	
LAW	414A	NEGOTIATIONS BOARD	S	1.00	.00	
LAW	416	LAW REVIEW WRITER	S	1.00	.00	
		COMPL	ATTM	PSSD	GPTS	GPA
TERM:	15.00	13.00	13.00	52.00	4.000	
UC CUM:	61.00	39.00	39.00	147.70	3.787	

\*\*\*\*\* CONTINUED ON NEXT COLUMN \*\*\*\*\*

SARAH WEEKS GAMBLE

CONTINUED

\*\*\*\*\* TRANSCRIPT TOTALS \*\*\*\*\*

TOTAL UNITS COMPLETED: 61.00 UC GPA: 3.787  
UC BALANCE POINTS: 69.7

COMMENTS:  
NOTE: SPRING 2020 SPECIAL GRADING (COVID-19)  
LAW WRITING REQUIREMENT SATISFIED - LAW 416

\*\*\*\*\* MEMORANDA \*\*\*\*\*  
UNIVERSITY REQUIREMENTS:

PREVIOUS DEGR:  
BACHELOR OF ARTS 05/01/17  
POMONA COLLEGE

END OF RECORD  
UNOFFICIAL UC DAVIS TRANSCRIPT COMPUTER PRODUCED ON  
06/04/21 - ISSUED TO STUDENT.

Page 1 of 2

Unofficial Transcript  
Pomona College

Name:	Sarah Weeks Gamble	Student ID:	10256464
DOB(MM/DD):	12/12	Curr Enr Stat:	Graduated
Sex:	F	Academic Stat:	Good standing
Class:	Graduated	Plan Grad Sess/Yr:	Spring Term 2017
Degree Date:	05/14/17	Advisor:	Englebert, Pierre
Major(s):	Public Policy-Politics	Printed	09/10/18
Degree:	Bachelor of Arts		

=====					----- Spring Term 2015 -----				
----- Allowed Transfer Credits -----					ECON052	PO	Principles: Microeconomics	1.00	B
Transfer Total from Advanced Placement Exam Credit					PE 006	PO	Core Training	0.25	P
AWARDED: 2.00					PE 022A	PO	Yoga - I	0.25	P
-----					POLI003	PO	Intro to American Politics	1.00	B+
Transfer detail from AP Exams					POLI071	PO	NGOs and Transnational Politics	1.00	A-
ENGLA	English Language & Composition	1.00	4		POLI167	PO	Beyond the Arab Spring	1.00	A
HISTA	American History	1.00	4						
							EARNED	IN GPA	GPA POINTS
					sess		4.50	4.00	42.00
Transfer detail from Advanced Placement Exam Credit					cum		19.25	15.00	156.00
AWARDED CREDIT 2.00 CR									GPA
									10.500
									10.400
-----					----- Fall Term 2015 -----				
----- Fall Term 2013 -----					BIOL081A	HM	Science and Pseudoscience	1.00	A-
ID 001	PO	Critical Inquiry Seminar	1.00	B+	/ Current Issues in Biology				
		Cold Places			PE 120	PO	Vars Team: Volleyball	0.25	P
PE 120	PO	Vars Team: Volleyball	0.25	P	POLI033A	PO	American Constitutionalism I	1.00	B
POLI008	PO	Intro to International Relations	1.00	B+	POLI070	PO	International Human Rights	1.00	A-
POLI090	PO	Statistics	1.00	B+	POLI162	PO	Comparative Politics of Africa	1.00	A
SPAN033	PO	Intermediate Spanish	1.00	P^					
							EARNED	IN GPA	GPA POINTS
					sess		4.25	4.00	43.00
					cum		23.50	19.00	199.00
									GPA
									10.750
									10.473
-----					----- Spring Term 2016 -----				
----- Spring Term 2014 -----					RWAN001		National & Ethnic Identity	0.75	A
EA 010	PO	Intro to Environmental Analysis	1.00	A-	RWAN002		Post Genocide Restor Peace Bld	0.75	A
ECON051	PO	Principles: Macroeconomics	1.00	B	RWAN003		Kinyarwanda	0.75	A
ENGL091	PO	Englighthnmt,Romantic,Victrn Lit	1.00	B+	RWAN004		Research Methods & Ethics	0.75	A
HIST071	PO	Modern Europe Since 1789	1.00	B+	RWAN005		Independent Study Project	1.00	A-
SPAN011	PO	Spanish Conversation, Intermed	0.25	P	Pomona Study Abroad/Rwanda				
Pomona College Internship Progrm					Kigali/SIT Post-Genocide				
Uncommon Good					Pomona College Scholar				
Pomona College equiv .5 course in transfer credit.							EARNED	IN GPA	GPA POINTS
					sess		4.00	4.00	47.00
					cum		27.50	23.00	246.00
									GPA
									11.750
									10.695
-----					----- Fall Term 2016 -----				
----- Fall Term 2014 -----					PE 120	PO	Vars Team: Volleyball	0.25	P
EA 030	PO	Science and the Environment	1.00	A	POLI106	PO	The U.S. and Iraq	1.00	A
ENGL067	PO	Literary Interpretation	1.00	B+	POLI135	PO	Policy Implementation/Evaluation	1.00	B+
PE 120	PO	Vars Team: Volleyball	0.25	P	POLI164	PO	Adv Questions African Politics	1.00	A
POLI007	PO	United States Foreign Policy	1.00	A	PPA 190	PO	Internship and Thesis Seminar	1.00	B
SPAN044	CM	Advanced Spanish: Culture & Soc	1.00	B+	PPA 195	PO	Internship in Public Affairs	1.00	P
							EARNED	IN GPA	GPA POINTS
					sess		5.25	4.00	43.00
					cum		32.75	27.00	289.00
									GPA
									10.703
-----					-----				
=====									
Printed on 09/10/18									
=====									

Name: Sarah Weeks Gamble Student ID: 10256464  
=====

----- Spring Term 2017 -----  
ART 010 PO Painting I 1.00 A-  
GOVT117 CM California Politics 1.00 A  
PE 022A PO Yoga - I 0.25 P  
PE 025 PO Weight Training for Women 0.00 P  
PPA 191 PO Senior Thesis 1.00 B+

	EARNED	IN	GPA	GPA	POINTS	GPA
sess	3.25	3.00	33.00	11.000		
cum	36.00	30.00	322.00	10.733		

-----  
Pomona College  
Degree: Bachelor of Arts  
Awarded: 05/14/17  
Major(s): Public Policy-Politics

=====

The Family Educational Rights and Privacy Act of  
1974 prohibits the release of this information  
without the student's written consent.

=====



June 9, 2021

To Whom It May Concern:

It is my great pleasure to give my highest recommendation to Ms. Sarah Gamble. She would be a truly outstanding clerk in your chambers, and I am certain that you would be thrilled with your decision to hire her. Sarah is the kind of student one is delighted to recommend as one can use superlatives with no risk of hyperbole. She has worked with me as an excellent research assistant since summer 2020, and was my student in International Human Rights Law during spring term 2021. In that class she not only earned an A+, a grade I do not give lightly, but also received the Witkin prize as the top student in a very competitive class.

Throughout the time I have known her, Sarah has impressed me with her leadership ability, and integrity, as well as her superb research and writing skills. She is the kind of student to whom I always give the toughest assignments, knowing that she is both willing and able to complete them to the highest standard. Throughout the time I have known Sarah, she not only has demonstrated a tireless work ethic, but she also consistently considers and analyzes all sides of an issue before offering a recommendation or writing a memorandum.

As my research assistant, Sarah has helped me with a variety of projects including the painstaking research for an academic paper on COVID19 and human rights published by the American Journal of International Law (the top peer reviewed journal in the field), and a series of reports and events in my capacity as UN Special Rapporteur in the field of cultural rights. She also assisted me in preparation for my interactive dialogue on climate change and cultural rights with the UN General Assembly. Despite working full time over the summer and taking a full course load both semesters this year, she was always prepared and able to effectively handle concurrent assignments, and consistently demonstrated a high level of attention to detail and analytical ability. I have also been impressed by the way she collaborates with my other research assistants and students. She never fails to step in and assist others when needed and shows initiative in seeing projects through to completion. Additionally, she has excellent communication skills and always reaches out for clarification or to ensure projects stay on track timewise.

Moreover, Ms. Gamble also has strong leadership skills. She recently led the Fourteenth Annual King Hall Intraschool Negotiation Competition. She restructured the competition to fit the virtual environment, held an implicit bias training for 50 student judges, led a negotiation skills training for 64 students, and held open office hours for competitors. Additionally, she is currently a Law Student Association mentor. In that capacity, she mentors a 1L student and helps that student navigate law school in the virtual environment.

I am asked to write many letters of recommendations. This is one I am thrilled to write. Sarah Gamble would be a tremendous asset to your team. She will bring passion and dedication to her work, and is a very pleasant person to work with. I give her my highest recommendation.

Please do not hesitate to contact me should you require further information. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Karima Bennoune".

Karima Bennoune  
Martin Luther King, Jr. Professor of Law  
Homer G. Angelo and Ann Berryhill Endowed Chair in International Law  
Email: [kebennoune@ucdavis.edu](mailto:kebennoune@ucdavis.edu)